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**THESIS**

**PREVENTING TERRORISM IN THE LONG TERM:  
THE DISUTILITY OF RACIAL PROFILING IN  
PREVENTING CRIME AND THE COUNTERPRODUCTIVE  
NATURE OF ETHNIC AND RELIGIOUS PROFILING  
IN COUNTERTERRORISM POLICING**

by

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THE COUNTERPRODUCTIVE NATURE OF ETHNIC AND RELIGIOUS  
PROFILING IN COUNTERTERRORISM POLICING**

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## **ABSTRACT**

After the terrorist attacks on September 11, 2001, the desire of Americans to feel secure made ethnic and religious profiling a tempting security trade-off. Generalizations about Arabs and Muslims as terrorists seemed to lead to an increasing practice of singling out individuals who look Arab or appear to be Muslim in entry-exit systems and in counterterrorist investigations. Civil liberties and Muslim advocacy groups immediately cried foul as accusations of profiling began to surface in the media and various government reports. Today, the main emphasis of the debate continues to focus on civil liberties. The aim of this thesis is to take a fresh perspective on profiling in counterterrorist-operations and demonstrate that profiling is actually counterproductive to an effective long-term counterterrorism strategy. This thesis first highlights major findings on the usefulness of racial profiling in criminal policing. It then examines issues of ethnic identity and the grand strategy of Islamic terrorist organizations and illustrates the counterproductive nature of ethnic and religious profiling. It will also demonstrate that while complaints of ethnic profiling persist within the Muslim community, the technique does not appear to have played a role in the disruption of actual terrorist plots in the United States.

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## LIST OF ACRONYMS AND ABBREVIATIONS

<b>ACLU</b>	American Civil Liberties Union
<b>AcTIC</b>	Arizona Counter Terrorism Information Center
<b>CAPPS</b>	Computer Assisted Passenger Profiling System
<b>CIA</b>	Central Intelligence Agency
<b>CT</b>	Counterterrorism
<b>DHS</b>	Department of Homeland Security
<b>DOB</b>	Date of Birth
<b>DNI</b>	Director of National Intelligence
<b>FBI</b>	Federal Bureau of Investigation
<b>IACP</b>	International Association of Chiefs of Police
<b>IC</b>	Intelligence Community
<b>IDP</b>	Internally Displaced Person
<b>LE</b>	Law Enforcement
<b>LEO</b>	Law Enforcement Officer
<b>MS-13</b>	Mara Salvatrucha
<b>NCIC</b>	National Crime Information Center
<b>NCISP</b>	National Criminal Intelligence Sharing Plan
<b>NCTC</b>	National Counterterrorism Center
<b>NFCCG</b>	National Fusion Center Coordination Group
<b>OMG</b>	Outlaw Motorcycle Gang
<b>PDB</b>	President's Daily Brief
<b>TSC</b>	Terrorist Screening Center
<b>TSA</b>	Transportation Security Administration
<b>TTIC</b>	Terrorist Threat Integration Center
<b>USG</b>	United States Government
<b>UNRWA</b>	United Nations Relief Works Agency

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## **I. RACIAL, ETHNIC AND RELIGIOUS PROFILING IN THE UNITED STATES**

Ethnic profiling of Arabs and religious profiling of Muslims in the United States is often advocated as part of a counterterrorist (CT) strategy and anti-terrorist tool. Its use is contentious and provocative for a number of historical and legal reasons. Coupled with the uncertainty surrounding future terrorist attacks, the constant reminder of the potential for death and destruction on American soil by both the media and politicians marginalized civil liberties and replaced the void with measures for increasing security procedures, primarily though enhanced anti-terrorism measures. This security perspective re-ignited a debate that had seemed to dissipate in American public discourse since the heated debates on the racial profiling of African Americans that existed in the late 1990s.

After the terrorist attacks on September 11, 2001 (9/11), the desire of Americans to feel secure made ethnic and religious profiling a tempting security trade-off. Shortly after the 9/11 attacks, generalizations about Arabs and Muslims as terrorists seemed to lead to an increasing practice of singling out individuals who look Arab or appear to be Muslim in entry-exit systems and in counterterrorist investigations. Civil liberties groups and members of councils on Arab relations immediately cried foul, as accusations of ethnic and religious profiling began to surface in the media and various government reports. Today, the main emphasis of the debate continues to revolve around the legality and morality of ethnic and religious profiling. For reasons unknown, however, what continues to get overlooked is whether profiling even works.

The main goal of this thesis is to attempt to determine the utility or disutility of racial profiling in criminal policing, including terrorism. The findings outlined in subsequent chapters will attempt to demonstrate that ethnic profiling of Arabs and religious profiling of Muslims may not provide benefits that are greater than the costs of using profiling as part of an overall counterterrorism strategy.

## A. IMPORTANCE: TAKING SIDES ON PROFILING

Ethnic profiling of Arabs, and religious profiling of Muslims, in the United States is often advocated as part of a counterterrorist strategy and anti-terrorist tool. The practice of singling out individuals who look Arab or appear to be Muslim in entry-exit systems sparked a heated debate. The use of profiling is contentious and provocative for a number of historical and legal reasons. More so, support for profiling is often tied to feelings about Muslims. John Esposito noted in a 2007 comprehensive Gallup World Poll that 44 % of Americans say Muslims are too extreme in their religious beliefs, while fewer than half of Americans believe that U.S. Muslims are loyal to the United States; and nearly one-quarter of Americans surveyed do not even want a Muslim as a neighbor.<sup>1</sup>

The terrorist attacks on 9/11 created an increased sense of fear and anxiety in American public discourse. Coupled with the uncertainty surrounding future terrorist attacks of any magnitude, the constant reminder of the potential for death and destruction on American soil by both the media and politicians marginalized civil liberties and replaced the void with measures for increasing security procedures, primarily though enhanced anti-terrorism measures. This security perspective and emphasis on Arabs and Muslims is clearly defended by advocates for profiling, for example:

Of the nineteen hijackers responsible for [the 9/11] calamity, all were Arabic, all were practitioners of Islam, and all came from known state incubators of terrorism in the Middle East. Of the twenty-two suspects on the FBI's 'most wanted' list of international terrorists, all are Arabic, all are practitioners of Islam, and all come from known state incubators of terrorism in the Middle East. Not 'some' of them, or a 'disproportionate number' of them. All of them.<sup>2</sup>

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<sup>1</sup> John L. Esposito and Dalia Mogahed, *Who Speaks for Islam? What a Billion Muslims Really Think* (New York, N.Y: Gallup Press, 2007), 155.

<sup>2</sup> Jason L. Riley, "Racial Profiling and Terrorism," October 24, 2001, <http://www.facstaff.bucknell.edu/pagana/mg312/racialprofiling.html>, quoted in Harvey W. Kushner and Bart Davis, *Holy War on the Home Front: The Secret Islamic Terror Network in the United States* (New York: Sentinel, 2004), 122.

This statement serves as a summation of the extent to which generalizing Arabs and Muslims as possible terrorists after 9/11 evolved and speaks volumes for the assumptions behind the justification of using profiling as a tool for law enforcement officers and security agents to prevent future attacks.

The assumptions behind racial profiling constitute the same assumptions that are used in ethnic and religious profiling of Arabs and Muslims in the context of counterterrorism. A 2002 report published by the Leadership Conference on Civil Rights Education Fund, a civil rights coalition that has engaged in national civil rights lobbying efforts since 1957,<sup>3</sup> summarizes the basic assumptions fueling profiling in counterterrorism policing:

[S]tate and local law enforcement officers are clearly acting on the basis of assumptions about the propensity of certain racial, ethnic and religious groups to engage in terrorism—in the same way they have long assumed African American or Hispanic involvement in drug crimes and immigration violations—and in the process are stopping, searching, and arresting many innocent people.<sup>4</sup>

Arguably, 9/11 exacerbated the assumptions driving the justification for profiling Arabs and Muslims at airports, office buildings, border entry checkpoints, sporting events, and other venues of security interest.

Historically, there is a long controversy surrounding the use of racial profiling in criminal investigations. The literature points to several examples of such use. The historical examples, however, are absent of any analysis that uses measures of success in an attempt to demonstrate whether or not profiling works in criminal policing. One such example dates back to the late 1980s and lasted through the 1990s, where state police in Maryland profiled African Americans on Interstate 95 (I-95) in an attempt to apprehend drug couriers.<sup>5</sup> Newspaper reports and journal articles covering this time period indicate

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<sup>3</sup> “About LCCR & LCCREF,” on the Civilrights.org Web site, available at <http://www.civilrights.org/about/> (accessed May 2, 2009).

<sup>4</sup> Leadership Conference on Civil Rights Education Fund (LCCREF), *Wrong then, Wrong Now: Racial Profiling before and After September 11, 2001* (2001), [http://www.civilrights.org/publications/reports/racial\\_profiling/racial\\_profiling\\_report.pdf](http://www.civilrights.org/publications/reports/racial_profiling/racial_profiling_report.pdf).

<sup>5</sup> Lauri S. Friedman, *Are Efforts to Reduce Terrorism Successful?* (San Diego: Greenhaven Press, 2005), 74.

that fewer than 20 % of all drivers on I-95 were black, though about 70 % of all vehicles stopped and searched contained black occupants; sometimes the vehicles were completely dismantled after turning up no evidence.<sup>6</sup> The literature is completely permeated with historical examples of racial profiling in criminal policing. All of the literature seems to gravitate toward arguing that profiling is morally wrong and obstructs civil liberties, while glancing over measures of effectiveness.

There are two sides in the profiling debate: one side advocates profiling, the other argues against profiling. Those who advocate profiling do so on the basis of observations that terrorists tend to be Arab and Muslim. From this, they maintain that focusing on this group of people is an efficient and effective way of policing. Others, however, argue that targeting people who look like Mohammed Atta and the other 9/11 hijackers is far too inclusive.<sup>7</sup> Critics of profiling argue that predictive profiles based on race, ethnicity, or religion draw too much attention away from observations of behaviors. Moreover, critics often point to lack of evidence to support a visible reduction in both crime and terrorism as a result of profiling. Instead, critics of profiling argue that observing behaviors could illuminate more critical leads in counterterrorism policing.

There is also a strong base of support advocating the use of profiling in counterterrorist policing. Harvey Kushner argues in favor of ethnic and religious profiling. He states that Arab terrorist networks have operated in the United States as early as the mid-1980s, with the most prominent documented case of a close-knit network originating out of North Carolina Agricultural and Technical State University in Greensboro.<sup>8</sup> The individuals in what was then perceived as a religious/social/cultural network at the North Carolina A&T each became the subjects of intense scrutiny and federal investigation for terrorism related offenses. All were Arabs; all were Muslims.

Richard Lowry, a contributor to the *National Review* and author of *Legacy: Paying the Price for the Clinton Years*, argues that racial profiling reduces terrorism. He

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<sup>6</sup> Friedman, *Are Efforts to Reduce Terrorism Successful?* 74.

<sup>7</sup> *Ibid.*, 75.

<sup>8</sup> Kushner and Davis, *Holy War on the Home Front: The Secret Islamic Terror Network in the United States*, 1.

states, “Islamic terrorists will necessarily be Muslim, and probably from the Arab world. Not to profile for those characteristics is simply to ignore the nature of today’s terrorism.”<sup>9</sup> Not only does Lowry argue that profiling is not discrimination, but he declares that the extra burden on young male Arab-Americans and Arab immigrants is an acceptable social cost given the stakes involved in preventing another attack.<sup>10</sup> His argument is commonplace for those who advocate profiling in the debate on whether or not profiling is an effective tool in reducing terrorism. However, neither Kushner nor Lowry present indicators that equate to measures of success, an integral part of determining the usefulness of profiling.

Another school of thought criticizes the use of profiling against Arabs and Muslims by asserting that profiling is only used because of society’s reaction to the perceived threat by Muslims. By generalizing the correlation between terrorists and Arab-Muslims, the entire population of those groups is perceived as potential terrorists, thereby demonizing them as suspects intent on committing terrorism. Summarily, an entire culture is perceived as a threat. The threat, in turn, manifests itself into the bedrock of a society’s norms and belief system, effecting dramatic alterations in what society is willing to both advocate and tolerate to preserve its own security. Jane Mayer articulates this argument in her work, *The Dark Side*. She posits that the threat of future terrorist attacks caused a fundamental shift in U.S. societal discourse that led to the sort of evil dynamics personified in the conduct of torture in prisons.<sup>11</sup> The assumptions behind Mayer’s argument demonstrate that in perceiving Arab-Muslims as a threat and hotbed of potential terrorists, there is a subsequent shift in what society is willing to advocate in preserving its security.

There is another side to profiling that does not seem to be mentioned in the literature pertaining to profiling. This alternative side suggests that profiling is likely counter-productive to an effective strategy towards preventing terrorism. Essentially,

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<sup>9</sup> Friedman, *Are Efforts to Reduce Terrorism Successful?* 65.

<sup>10</sup> *Ibid.*, 67–69.

<sup>11</sup> Jane Mayer, *Dark Side: The Inside Story of how the War on Terror Turned into a War on American Ideals* (New York: Doubleday, 2008), xx.

profiling could have greater long-term ramifications than what civil-liberty advocates are currently arguing, and what security advocates seem to have failed to address. Some scholars warn of the potential for the “European effect” to take hold in the United States. Some estimates state, “between 15 and 20 million Muslims now call Europe home and make up four to five % of its total population.”<sup>12</sup> One scholar argues that Europe is experiencing a rapid emergence of homegrown terrorism.<sup>13</sup> One position is that a possible causal factor of the homegrown terrorism is that Arabs and Muslims do not feel European. Hate and discontent are passed from one generation to another, worsening with each passing generation, and the end result is a massive population living in Europe and hating Europeans.<sup>14</sup> This could be due, in large part, to the claim that most European nations “never learned to integrate newcomers.”<sup>15</sup> The result is that Europe really has more of an “internal colony”—referring to Europe’s Muslims—as opposed to an integrated society.<sup>16</sup>

These points are important because they highlight the role of issues such as identity, and assimilation and integration, as ingredients to radicalization in the Muslim diaspora. These issues play an important role in determining whether profiling Muslims in CT-operations is effective. Has the United States, by-and-large, avoided this problem because of the inclusive nature of civil rights, or because much of the U.S. was built on immigration?<sup>17</sup> That question, alone, is not the primary scope of this thesis. The question, however, is important when it comes to the arbitrary use of profiling Muslims in CT-operations. I will attempt to demonstrate that profiling may actually reject the

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<sup>12</sup> Robert S. Leiken, “Europe’s Angry Muslims,” *Foreign Affairs* 84, no.4 (July-August 2005), 120–135, 122.

<sup>13</sup> *Ibid.*, 121.

<sup>14</sup> Leiken calls second and third-generation Muslims in Europe the most “dangerous incarnation.” See Leiken, “Europe’s Angry Muslims,” 127.

<sup>15</sup> Leiken, “Europe’s Angry Muslims,” 122.

<sup>16</sup> *Ibid.*, 123.

<sup>17</sup> Leiken asserts that the Muslim immigration problem that Europe is dealing with is different because Muslims entering the U.S. were entering a country already established on immigration, where as the Muslims entering Europe after WWII “crowded into small, culturally homogenous nations...a new phenomenon for many host states [in Europe] and generally unwelcome.” See Leiken, “Europe’s Angry Muslims,” 122.

assertion that the U.S. is doing a better job of integration, primarily because the use of profiling fosters resentment, which could lead to future generations of Muslims living in America and hating Americans.

The idea that Muslims pose a threat is also prevalent in another area of literature, suggesting that profiling fuels tensions between non-Muslims and Arab-Muslims living in the United States and exacerbates the “clash of civilizations” between Muslims and non-Muslims in the United States.<sup>18</sup> A particular notion of anxiety is felt in the Muslim world in the manner it frames the West, just as a notion of anxiety is felt by the West in the manner it frames Muslims, Islamism, and extremism. This anxiety translates into a feeling of being threatened by the other, and transcends into the idea that there exists some kind of existential struggle between the West and the Muslim world. “In effect, the West holds distinctly Islamic culture responsible for an existential threat [of violence perpetrated by *jihad*].”<sup>19</sup> Domestic ethnic relations within the U.S. function as a microcosm for the clash between the West and the Muslim world that Amit Pandya suggests is occurring on the global scale. These perspectives fuel arguments for profiling on the basis that it is this group of people who are engaged in criminal acts and threaten U.S. society.

In sum, though there are two very clear sides to the debate on profiling, the survey of the literature has identified no literature that argues whether or not racial or ethnic profiling, including its use in counterterrorism policing, even works by using measures of success as indicators. The literature indicates that there is a strong emphasis being placed on debating whether profiling should or should not be used by arguing that it is a security necessity, or arguing that it is blatant discrimination, or that it is a fundamental invasion of an individual’s constitutional rights. However, there is practically no emphasis on whether or not racial or ethnic profiling even works. This thesis aims to address that gap

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<sup>18</sup> Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, 1st Touchstone ed. (New York: Simon & Schuster, 1997).

<sup>19</sup> Amit Pandya, *Islam and Politics: Renewal and Resistance in the Muslim World*, Regional Voices: Transnational Challenges project, (2009), available at <http://www.stimson.org/rvproto/partner.cfm?SN=RV200902021933> (accessed May 12, 2009).

and determine the measures of success that indicate the extent that profiling aids CT-operations, and on a broader dimension, is an effective technique in law enforcement.

## **B. SUMMARY OF METHODOLOGY**

This thesis examines the use of racial profiling in law enforcement and CT-operations, and it argues that such profiling can be counterproductive when relied on too heavily. This argument will be made first by examining a well-known case of the use of such techniques by police. This example is cited as demonstrating how profiling can be effective, but it will show that the social costs of using race as a sole indicator in policing tactics will yield extremely high social costs, outweighing the benefits of such a technique. Next, this thesis will highlight that following September 11, 2001, law enforcement officers might have relied too heavily on backgrounds such as ethnicity and religion, specifically Arabs and Muslims, in conducting CT-operations. It will accomplish this through a survey of the literature and through brief excerpts from experiences of Muslims and Arabs living in America who claim they were victims of profiling. I will show that this resulted in marginalizing the Arab and Muslim community in the United States, and increased the sense of distrust of law enforcement, ultimately yielding the same high social costs as what appeared to have resulted in the Maryland racial profiling case.

The thesis will then examine several cases of foiled terrorist plots, to see what factors appear to have led authorities to be able to stop the plots—and it will show that racial profiling does not seem to have been involved. Nevertheless, the perception by the Muslim and Arab community in the United States that they are being targeted by law enforcement officers conducting CT-operations continues to persist. While it appears law enforcement officers agree that, to some degree, race and ethnicity will always play a role in their policing tactics, the questions remains as to where the line gets crossed when race and ethnicity are relied on too heavily. As such, the final chapter of this thesis will attempt to capture where that threshold might rest, and try to determine the extent that profiling becomes counterproductive.

## **1. The Challenge of Case Selection in Racial Profiling**

Historically, there is a long controversy surrounding the use of racial profiling in criminal policing. Case selection of incidents of racial profiling in law enforcement is difficult because most historical examples of racial profiling are absent of sufficient data to describe the events in question. In most allegations of racial profiling, statistical disparities are used to illustrate a disproportionate number of police transactions (e.g., traffic stops, searches or arrests) on minority groups. However, statistical disparities often times lack in-depth analysis and thus increase the propensity to make insufficient generalizations about alleged police racial profiling tactics. This makes the task of identifying measures of success difficult.

One example that sufficiently analyzes racial profiling in law enforcement is a case that dates back to a series of incidents from the late 1980s to late 1990s. In this case, state police in Maryland profiled African Americans on Interstate 95 in an attempt to apprehend drug couriers.<sup>20</sup> The Interstate-95 racial profiling case in Maryland is one of the most thoroughly examined cases of racial profiling. Because this case has undergone extensive analysis, it will help in extracting measures of success for the purpose of this paper.

## **C. RACIAL PROFILING DEFINED**

Racial profiling is a concept that has vast implications in the field of criminal policing. While there is no universally accepted definition of racial profiling, there is sufficient precedent of its use that scholars can identify and analyze its use in specific contexts. Most of the serious analyses on racial profiling agree on a description that is, for the most part, in line with the following key points:

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<sup>20</sup> Lauri S. Friedman, *Are Efforts to Reduce Terrorism Successful?* (San Diego: Greenhaven Press, 2005), 74.

Racial profiling occurs when a law enforcement officer questions, stops, arrests, searches or otherwise investigates a person because the officer believes that members of that person's racial or ethnic group are more likely than the population at large to commit the sort of crime the officer is investigating.<sup>21</sup>

This description of racial profiling demonstrates that racial profiling is essentially a conscious judgment call by a law enforcement officer. The officer bases his decision on a judgment that an individual is part of a particular group that is more prone to crime than individuals of other racial or ethnic groups.<sup>22</sup>

When is it not racial profiling? Most of the academic, jurisprudence, and policy perspectives of racial profiling do not consider allegations of racial profiling appropriate when an investigation is underway and law enforcement officers are looking for a particular person who might fit a specific physical description. One example is when law enforcement is searching for a person of interest or suspect fitting a specific profile, i.e., the victim was last seen with an unknown Hispanic male, approximately 6 feet tall, tattoo on the left forearm, etc., etc. On the contrary, racial profiling is often tagged as discriminatory and raises complaints when law enforcement officers target a particular race or ethnic group in search of crimes that have not yet been reported or committed.<sup>23</sup>

#### **D. CONCLUSION**

In the next chapter, this thesis will highlight several findings that function as measures of success for racial profiling as a law enforcement technique. Much of the emphasis in the findings will be placed on the unintended consequences of relying too heavily on race, ethnicity, or religious affiliation in criminal policing, to include CT-operations. Later chapters will highlight that ethnic and religious profiling of Arabs and Muslims living in the United States also creates unintended consequences, much like a

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<sup>21</sup> Samuel R. Gross and Katherine Y. Barnes, "Road Work: Racial Profiling and Drug Interdiction on the Highway," *Michigan Law Review* 101, no. 3 (December 2002), 654.

<sup>22</sup> Gross and Barnes, "Road Work: Racial Profiling and Drug Interdiction on the Highway," 655.

<sup>23</sup> *Ibid.*, 655.

“Catch-22” effect?<sup>24</sup> The preliminary findings will suggest that the benefits of ethnic and religious profiling are trumped by the social costs and consequences of its use. More specifically, the ethnic and religious profiling of Arabs and Muslims as part of a counterterrorist policing strategy reinforces the negative image of both law enforcement and Americans in general, as perceived by the global Muslim community.

In the context of terrorism, these unintended consequences might lead to situations that are worse than simply degraded community relations. Consider one hypothesis in the context of counterterrorism strategy: Overwhelming military force reinforces the terrorists’ target of aggression to be an evil enemy and thus enhances their status and promotes an increase of recruits to their cause.<sup>25</sup> Ethnic and religious profiling of Arabs and Muslims, too, may increase legitimacy within the Arab-Muslim community of a violent terrorist campaign. Thus, the use of ethnic and religious profiling may in fact provide radical social networks an additional selling point in their efforts to recruit individuals that are susceptible to their propaganda.

Finally, understanding that the social consequences of profiling can be extremely high, a serious examination of the utility or disutility of profiling must consider the fact that race, ethnicity, and religion will most likely always play a role in law enforcement’s efforts to prevent or reduce crime, including terrorism. The question that must be asked is: to what degree is race, ethnicity, or religion a factor in preventing crime? This, too, will be addressed in this thesis. I will attempt to capture the threshold that appears to exist in the use of profiling as a policing technique. This effort is important in illustrating where the line gets crossed in relying too heavily on race, ethnicity, or religion as indicators in preventing crime.

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<sup>24</sup> The idea of the Catch-22 effect was derived from a hypothesis that is shared by prominent scholars of terrorism such as Andrew Silke and Martha Crenshaw, who refer to the idea of a Catch-22 effect when discussing the use of overwhelming force against the terrorist infrastructure.

<sup>25</sup> Andrew Silke, *Terrorists, Victims, and Society: Psychological Perspectives on Terrorism and its Consequences* (Chichester, West Sussex, England; Hoboken, NJ: Wiley, 2003), 267. While profiling is a more passive counterterrorism tactic than massive military strikes, the Catch-22 reference is an appropriate phrase that conveys the dilemma created by profiling Arabs and Muslims in counterterrorist policing.

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## II. CASE STUDY OF RACIAL PROFILING: MARYLAND'S INTERSTATE-95 CORRIDOR

Many analyses of racial profiling concentrate on using disparate data to prove that police officers are making a subconscious judgment call that a person might be suspect of a crime, or engaged in a crime, because of the color of his or her skin. The same analyses are now being cited by civil liberties groups as precedent to demonstrate that officers are now profiling Muslims using the same assumptions that were used in the often-cited cases of “driving while black” or “driving while brown.” One lawsuit by several Muslims even used the same provocative language to push civil actions against the airline industry, calling their suit “flying while Muslim.”<sup>26</sup> It is important to examine such analyses and determine what other findings can be extracted, as such an examination might help to provide useful insight into whether or not the technique was in any way successful.

In this chapter, I highlight several findings that function as measures of success for racial profiling as a law enforcement technique. I do this by first examining a well-known case of the use of such a technique by police on the Interstate-95 corridor in Maryland. I then weigh the findings against the social costs of such a technique to illustrate the unintended consequences of relying too heavily on race in preventing crime. This contributes to my thesis by demonstrating that the benefits of ethnic and religious profiling are trumped by the social costs and consequences of its use. The findings of this case study highlight that the use of ethnic and religious profiling of Arabs and Muslims as part of a counterterrorist policing strategy reinforces the negative image of both law enforcement and non-Muslim Americans in general, as perceived by the global Muslim community, and is likely counterproductive to an effective long-term CT-strategy.

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<sup>26</sup> The original phrase of “flying While Muslim” comes from a lawsuit filed by six Muslim Imams that claim their constitutional rights and civil liberties were violated when U.S. Airways removed them from the flight before take-off and security agents questioned them. The Council of American-Islamic Relations (CAIR) created a Web site dedicated to the case, available at <http://www.flyingwhilemuslim.org>. See also Shqeirat et al. v. U.S. Airways Group, et al.

To discover whether or not profiling works in CT-operations, I conducted a case study of racial profiling in law enforcement to determine if it was effective in preventing crime. There are four major findings that will be presented in the case study:

- (1) Greater quantities of drugs, if not most, were found in just a handful of searches on black motorists, indicating that the targeting of black motorists on I-95 was successful in finding drug dealers.
- (2) While the Maryland State Police (MSP) has defended its practices under the argument that their tactics have led to the arrest of a handful of dealers, a very high number of black motorists were targeted, whether intentionally or unintentionally, to yield those results. The resulting social consequences of the perceived targeting of black motorists were extremely high, exacerbating racial tensions and provoking lasting negative impacts on law enforcement-community relations.
- (3) There is no evidence to support or deny the claim that if MSP had pulled over and searched the same number of white motorists, that they would not have found a large amount of drugs or a handful of drug dealers.
- (4) Race is not a good indicator, when relied on too heavily, in preventing crime as black and white motorists are practically equal in hit rates: That is, they are just as likely to be found with some drugs.

These findings provide useful insight into determining whether ethnic profiling of Muslims can have any impact in preventing terrorism.

#### **A. A DEADLY DRUG PROBLEM IN MARYLAND**

Situated on the East Coast of the United States, the Interstate 95 (I-95) corridor is much more than a long stretch of highway. Spanning from Florida to Maine, I-95 is over 1,900 miles long with connections to over 40,000 miles of the nation's highway system.<sup>27</sup> The I-95 corridor provides access to 46 major seaports and 103 commercial airports, and its combined support of the nation's economic infrastructure processes over 40 % of the

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<sup>27</sup> The I-95 Corridor "Fact Sheet," on the I-95 Corridor Coalition Web site, available at <http://www.i95coalition.org/i95/Home/I95CorridorFacts/tabid/173/Default.aspx> (accessed May 31, 2009).

U.S. Gross Domestic Product.<sup>28</sup> In Maryland, the I-95 corridor is the most heavily trafficked highway, and provides access to both the District of Columbia and Baltimore. The I-95 corridor in Maryland serves as the major conduit to the central and urban populations situated throughout the state. It is not surprising, then, why this highway might be the perfect means for the vast distribution of illegal drugs throughout the state.

From the mid-1980s to early-2000s, Maryland began experiencing an illegal drug problem that drastically multiplied in severity across all categories and ages in a short amount of time. “In a 1994 survey in Maryland, for instance, 13 % of all eighth-graders reported that they had tried marijuana, nearly four times the 3.5 % who said they had used it in 1992.”<sup>29</sup> This is only a fraction of the growing problem of illegal narcotics in Maryland.

It quickly became clear that Maryland had an illegal drug problem that was worsening nearly every day. In the 10-year period from the late 1980s to late 1990s, deaths resulting from drug overdose nearly tripled.<sup>30</sup> The rising drug problem in the early 90s was not limited to the use of marijuana. According to a 2002 report released by the Substance Abuse and Mental Health Services Administration (SAMHSA), amphetamine/methamphetamine emergency-room visits in Baltimore increased 500.5 %, between 1995 and 2002.<sup>31</sup> Also in Baltimore, heroin and cocaine abuse surged. Emergency room visits to Baltimore-area hospitals, as a result of heroin or cocaine overdose, increased from 3,056 to 10,579, with the largest heroin-related increase in the nation and the second largest cocaine-related increase in the nation admitted to Baltimore area hospitals from 1990–1991.<sup>32</sup>

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<sup>28</sup> The I-95 Corridor “Fact Sheet,” on the I-95 Corridor Coalition Web site.

<sup>29</sup> Charles W. Hall, “Area Juveniles Feel the Tug of Illegal Drugs; Officials See a Surge among Younger Users,” *The Washington Post*, June 23, 1996.

<sup>30</sup> United States. National Drug Intelligence Center. *Maryland Drug Threat Assessment*, Johnstown, PA: U.S. Dept. of Justice, National Drug Intelligence Center, 2002, 8.

<sup>31</sup> “Drug Abuse; Data show Increased Abuse of Methamphetamine in Midwest, East, South,” *Medical Letter on the CDC & FDA* (September 19, 2004), 32.

<sup>32</sup> Paul W. Valentine, “Drug Abuse ‘Epidemic’ Continues in Baltimore,” *The Washington Post*, February 3, 1993.

As the primary infrastructure used to bring illegal drugs into Maryland and to distribute them throughout its urban and rural parts, the I-95 corridor became one of many battlegrounds for law enforcement officers to target possession, distribution, and trafficking of illegal drugs. The methods were viewed by the African American population as intentionally biased towards blacks. The debate over racial disparities in drug enforcement, including stops, searches, seizures, and convictions, reached the highest levels of government. The empirical evidence that is now available provides tools to measure the success of racial profiling in criminal policing, and examples of logical fallacies and pitfalls in using quantifiable indicators of success in determining the efficiency of racial and ethnic profiling.

## **B. USING HIT RATES TO MEASURE DISPARATE DATA**

Perhaps the most common method of measuring success is based on a systematic and empirical method of identifying *hit rates*. Hit rates are defined by the frequency of successful searches on the I-95 corridor.<sup>33</sup> The time period under examination includes data obtained from MSP that spans the period 1995–2000. First, quantifiable measures of success based on previous analyses will be illustrated and discussed. Next, a qualitative cost-benefit analysis of the results will highlight the unintended consequences of racial and ethnic profiling.

It is necessary to first explain the importance of hit rates as it pertains to this thesis. As this analysis will soon demonstrate, it is not enough to argue that more drugs were found in vehicles driven by blacks than whites so, therefore, the targeting of black motorists was successful in drug interdiction. Hit rates infer the likelihood of a sample of searches successfully finding drugs. Oftentimes, related to the I-95 racial profiling case, statistical summaries will demonstrate disparities for the purpose of proving that racial profiling was used, and the results are illustrated in such a way that draws attention away from whether or not racial profiling works. This case study demonstrates that racial profiling was occurring on I-95, but the use of hit rates highlight one of the most

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<sup>33</sup> Samuel R. Gross and Katherine Y. Barnes. "Road Work: Racial Profiling and Drug Interdiction on the Highway." *Michigan Law Review* 101, no. 3, December 2002, 660.

important findings that pertain to this thesis: that race is not a good indicator for the potential of criminal activity, especially when it is relied on too heavily by law enforcement to prevent crime.

### C. HIT RATES AND MEASURES OF SUCCESS

Empirical data reported by MSP for the period 1995–2000 actually appears to indicate that the targeting of black motorists on the I-95 corridor was a successful drug interdiction campaign. In 1995, 70.4% of all searches were conducted on black motorists while only 20.4% of all searches were conducted on white motorists.<sup>34</sup> Moreover, from 1995 to 1996, black motorists were searched at an average rate of 13.9 times the rate that whites were searched.<sup>35</sup> Though litigation against MSP might have led to an eventual even playing field in 1998 (see Figure 1), overall searches from 1997–2000 were conducted on average 5.2 times more often on black motorists than on whites.<sup>36</sup> The results of all searches in the I-95 corridor spanning the entire period, listed by the proportions of drugs seized, are detailed in Table 1. What is clear is that black motorists were not only searched more often, but they were yielding the seizure of the vast majority of drugs. Does this mean that blacks are more likely to have drugs? The answer is, “No.”

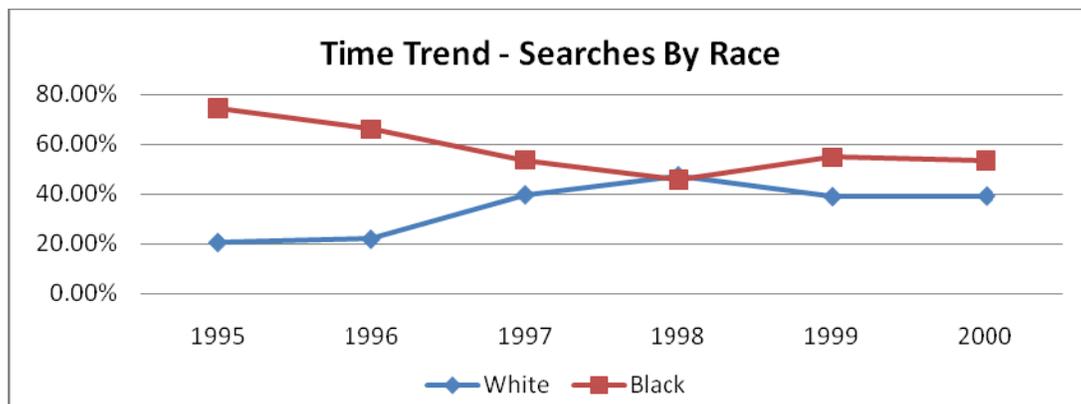


Figure 1. Time Trend of Searches on I-95 by Race<sup>37</sup>

<sup>34</sup> Gross and Barnes, “Road Work: Racial Profiling and Drug Interdiction on the Highway,” 716.

<sup>35</sup> *Ibid.*, 720.

<sup>36</sup> *Ibid.*, 666.

<sup>37</sup> *Ibid.*, 716–720.

The numbers in Table 1 *do not* warrant the conclusion that blacks are more likely to have drugs. In fact, there is an intervening variable that justifies the results in Table 1.

	Marijuana	Cocaine	Crack	Heroin
White	0.9%	7.1%	1.8%	25.2%
Black	96.2%	75.0%	96.7%	57.7%

Table 1. Proportions of the total amounts of drugs seized in the I-95 Corridor<sup>38</sup>

It is not that black motorists are more likely to have drugs; it is that greater quantities of drugs were found in several particular instances of searches on black motorists. In fact, the searches conducted by MSP on black motorists uncovered a larger number of medium-to-large dealers than were uncovered by searches on white motorists.<sup>39</sup> In fact, during mid to late-1990s, although black motorists were searched anywhere from approximately 5 to 13 times more often, the white motorists who were searched were actually slightly more likely to be carrying some drugs.<sup>40</sup> The difference can be explained by the data indicating that the black motorists who were searched were more than three-and-a-half times more likely to be *small dealers* and nearly five times more likely to be *medium to large dealers*.<sup>41</sup> Drug dealers are classified as having large amounts of drugs in their possession.<sup>42</sup> This means that the drugs seized from only a handful of black motorists were more than likely found in single instances in much larger quantities. This refutes the conclusion that black motorists are more likely to have drugs. Instead, the sweeping searches conducted on many black motorists uncovered a single stash, of perhaps several different drugs, in much greater quantities, but in only a handful of searches.

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<sup>38</sup> Gross and Barnes, “Road Work: Racial Profiling and Drug Interdiction on the Highway,” 705.

<sup>39</sup> For a complete description of what constitutes a dealer, see Appendix A, Table A-1.

<sup>40</sup> Gross and Barnes, “Road Work: Racial Profiling and Drug Interdiction on the Highway,” 703.

<sup>41</sup> *Ibid.*, 703.

<sup>42</sup> See Appendix A, Table A-2.

Another measure of success is found in the successful discovery of drug dealers. Assuming that the counterdrug efforts on I-95 did in fact include the technique of profiling black motorists, then the data available indicates that targeting of black motorists on I-95 was successful in finding drug dealers. The fact that dealers are being successfully isolated has led MSP to defend its practices in recent years, especially with the search trends indicating that the proportional disparity was far less in 2000 than in 1995.<sup>43</sup> Nevertheless, it is not logical to stretch this measure of success and infer or conclude that black motorists were more likely to have drugs, which is arguably the rationale behind the tactic of racially profiling blacks on I-95.

The frequency of successful searches, or hit rates, of both white and black motorists highlights another measure of success; however, this measure suggests that race is not a good indicator for preventing crime when relied on too heavily. The resulting hit rate on the I-95 corridor demonstrates that 40.3% of the searches on white motorists and 37.8% of the searches on black motorists turn-up drugs.<sup>44</sup> The probability of a white motorist getting searched is 1 in 105 stops, while the probability of a black motorist getting searched is 1 in 36 stops.<sup>45</sup> Thus, while a black motorist is about three times more likely to get searched than a white motorist, white motorists were slightly more likely to have some drugs. This measure of success is more problematic to MSP's attempt to defend its practices, as it suggests that had MSP pulled over white motorists at a similar rate than that of black motorists, it is entirely possible that the searches would have also resulted in the finding of a handful of medium-to-large dealers, just as they had in searches conducted on black motorists. Without having the search rate to determine the resulting drug seizures, there will always remain that lingering doubt as to how the results might have differed. Nevertheless, the measure of success that black and white motorists were just as likely to have some drugs in their possession suggests that race is not a good indicator for preventing crime, when relied on too heavily.

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<sup>43</sup> See Figure 1. See also Gross and Barnes, "Road Work: Racial Profiling and Drug Interdiction on the Highway," 705–706.

<sup>44</sup> Gross and Barnes, "Road Work: Racial Profiling and Drug Interdiction on the Highway," 668.

<sup>45</sup> *Ibid.*, 667.

The data presented here highlights that a quantifiable measure of success in racial profiling is found in the use of hit rates. The data first appears to lead to the conclusion that racial profiling of black motorists on I-95 was a successful tool in Maryland's drug interdiction campaign. However, the data in fact indicates that racial profiling only yielded the seizures that it did because MSP was able to find a few dealers carrying large quantities of drugs. However, a lot of black motorists had to be searched to yield this result. As will be discussed later in this chapter, this created unexpected social costs that outweigh the long-term benefits of racial profiling methods.

### **1. Additional Considerations in the I-95 Case**

The I-95 racial profiling case presupposes that race was the discriminating factor in making traffic stops, searches, and arrests in the attempt to quell the illegal distribution of drugs. This assumption is used primarily to extract the measures of success. The assumption does not stipulate that, in each case in which a black motorist was stopped, the officers making the stops made the conscious judgment call that the black motorists they were stopping were potential criminals because of the color of their skin. There are many organizations exhausting all means available to find evidence that police officers were making such a conscious decision. These efforts continue to prove fruitless. In March 2000, the General Accounting Office published a report that concluded that no comprehensive source of information, to include quantitative analyses and anecdotal accounts, could be used to determine if race was the primary factor in making a stop.<sup>46</sup>

Taking this into consideration, the disparate numbers clearly suggest that some other cause or causes led to black motorists being stopped and searched many times more than white motorists on the I-95 corridor in Maryland. This is important, because it calls to mind the idea that there are indicators—both in addition to, and associated with, race—that law enforcement officers could be using in their decision-making processes. For the day-to-day patrolman, the various additional factors could vary depending on the situation and environment. The last chapter of this thesis will attempt to capture the

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<sup>46</sup> U.S. General Accounting Office, *Racial Profiling: Limited Data Available On Motorist Stops*, GAO Report GGD-00-41 (Washington: March 2000), 1, 18–23.

different indicators that might play a role. However, for a particular set of events like the Maryland Interstate-95 case, law enforcement officers were embarked on a very specific mission: to crack down on the distribution of drugs throughout the state. This has important implications to the extent that race might have been relied upon in stopping, questioning, and searching motorists on I-95.

Like any mission that is conducted in a law enforcement capacity, intelligence will likely play a large role in articulating exactly how that mission is going to be executed. Law enforcement investigations produce detailed reports regarding the groups and individuals most responsible for the trafficking and distribution of illegal drugs throughout the state. One such report comes from the U.S. Justice Department's National Drug Intelligence Center (NDIC). The reports published by NDIC provide detailed descriptions, which include race, on the suspected drug importers and distributors in Maryland.

If the criminal groups that are well known as the dominant source of the drug trafficking and distribution identify with a single race, then using race as a factor in attempting to narrow down the individuals involved is practically a foregone conclusion. For example, it is well known to law enforcement officials that Mexican criminal groups, such as the Latin Kings and Mara Salvatrucha (MS-13), are the dominant transporters of most of the methamphetamine, heroin and cocaine available in Maryland.<sup>47</sup> This is not to say that law enforcement officers should be arbitrarily stopping and searching Hispanics. On the contrary, the simple fact that Mexican criminal groups are primarily responsible for the importing and distribution of these drugs in Maryland highlights the conclusion that race will be used, to some degree, by law enforcement to narrow the aperture for how their resources will be employed in a counterdrug strategy.

Law enforcement officers in Maryland were aware of the ethnic backgrounds of the criminal groups predominantly responsible for the distribution of drugs in Maryland. This is completely overlooked in every analysis of the alleged use of racial profiling on

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<sup>47</sup> United States. National Drug Intelligence Center. *Maryland Drug Threat Assessment*, Johnstown, PA: U.S. Dept. of Justice, National Drug Intelligence Center, 2002, <http://purl.access.gpo.gov/GPO/LPS36619>, 25.

Interstate 95 that I have surveyed for this case study. The findings of the Maryland case study are still worthwhile for the purpose of this thesis. However, criminal assessments, like NDIC's Maryland Threat Assessment, must be a factor when attempting to determine if race is being relied on too heavily in preventing crime.

#### **D. THE SOCIAL COST OF RACIAL PROFILING**

The Maryland I-95 case study represents a much larger issue: Racial disparities exist throughout the entire criminal justice system in the United States.<sup>48</sup> As discussed previously, opponents of racial profiling point to racial bias as the reason for the disparate numbers, while proponents point to intervening variables not only to describe, but support, the disproportionate numbers. Regardless of where one stands on the issue, it is important to consider the social cost of using race as the primary indicator in preventing crime.

The primary social cost comes from the perception of guilt-by-association. The idea that a member of a specific race is more likely to be engaging in a crime fuels dissent and alienation within that racial class. Moreover, it intensifies a level of distrust between the officer and the community that the officer is in place to serve and protect. The guilt-by-association label might also cause a digression in racial justice. For decades, the idea of equal protection under the law has been a cornerstone for an entire social movement that pursued a more equal and just nation. In historical terms, we are still emerging from that era, so if race is being relied on as a primary indicator of crime, there is a sense from within the "targeted" communities that they are still viewed as unequal members of society.

Profiling also has a cumulative effect, and it appears this country has reached the tipping point. Word of an alleged case spreads quickly along the information highway, reaching members in communities all over the nation, so the effect reaches beyond the boundaries of the officer's jurisdiction. Recently in Massachusetts, a black Harvard professor accused a white Harvard police officer of racial profiling after the police officer arrested the professor in his own home while investigating a possible robbery in progress.

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<sup>48</sup> Merrick J. Bobb, Nicholas H. Miller, Ronald L. Davis and Oren Root, "Racial Profiling," in *Racial Profiling: Issues, Data, and Analyses*, ed. Steven J. Muffler (New York: Nova Science Publishers, Inc), 31-39.

Racial profiling has become the dirty word in U.S. societal discourse. The case exploded onto the center stage in a matter of hours, which even provoked President Barack Obama into saying, “the Cambridge police acted stupidly.”<sup>49</sup> Ironically, whether profiling is real or perceived, this case demonstrates just how divided the country truly is on the topic of racial profiling.

## **E. SUMMARY OF FINDINGS**

The data presented here from an in-depth case study of the I-95 events is an example of an empirical examination of this highly controversial topic. The analysis presents four overarching measures of success:

- (1) Greater quantities of drugs, if not the majority, were found in just a handful of searches of black motorists, indicating that the targeting of black motorists on I-95 was successful in finding drug dealers.
- (2) While MSP has defended its practices under the argument that their tactics have led to the arrest of a handful of dealers, a very high number of black motorists were targeted, whether intentionally or unintentionally, to yield those results. The resulting social consequences of the perceived targeting of black motorists were extremely high, exacerbating racial tensions and provoking lasting negative impacts on law enforcement-community relations.
- (3) There is no evidence to support or deny the claim that if MSP had pulled over and searched the same number of white motorists, that they would not have found a large amount of drugs or a handful of drug dealers.
- (4) Race is not a good indicator when relied on too heavily in preventing crime as black and white motorists are practically equal in hit rates, that is, they are just as likely to be found with some drugs.

While racial profiling might have led to the seizure of large quantities of illegal drugs, the data also suggests that whites were slightly more likely to have some drugs. While a few

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<sup>49</sup> Huma Khan and Michelle McPhee, “Obama Defends Criticism of Cambridge Police in Arrest of Gates,” July 23, 2009, on the ABC News Web site, available at <http://abcnews.go.com/Politics/story?id=8153681&page=1&page=1> (accessed October 28, 2009).

searches of black motorists did result in the seizure of several large quantities of drugs and the arrest of a handful of medium to large dealers, a lot of black motorists were stopped in order to yield these results.

The impact of the I-95 racial profiling case highlights the resulting social costs of such a practice. There are widespread accounts of people that believe they are being unfairly targeted by law enforcement because of their ethnicity or beliefs in Islam. It is difficult to determine whether the accounts are founded or exaggerated. Nevertheless, the perception of discriminating tactics is largely seen as racist and as a detriment to the social norms and values of American society.

Thus, there are contrasting measures of success that must be noted. The negative impact that racial and ethnic profiling has on minority community-police relations are viewed as a negative measure of success. It is viewed as such because the benefits of racial profiling are minimal compared to the lasting social consequences of the discriminating methods that its use requires. Ultimately, the social cost of racial or ethnic profiling is that its use increases the risk of marginalizing the race or ethnicity being profiled. While this is not necessarily a quantifiable means of measuring success, the social cost exacerbates racial tensions in the U.S., a liberal democracy that is struggling to emerge from a more nefarious era in its history wherein racially-fueled bias was commonplace. To this extent, and in such cases, racial or ethnic profiling is not an effective means in reducing crime.

## **F. CONCLUSION**

The Maryland I-95 case study presents a variety of measures of success when using race as a factor in preventing crime. There is an additional finding that is highlighted by the I-95 case study:

Given the fact that certain ethnic criminal groups were predominantly responsible for the distribution of drugs in Maryland, it is a foregone conclusion that race would be used, to some degree, in the counterdrug strategy. The question remains as to when law enforcement officers cross the line in relying too heavily on race as an indicator in preventing crime.

If law enforcement officers know that certain ethnic gangs and criminal groups are predominantly responsible for the distribution of narcotics in Maryland, then it is a foregone conclusion that race is going to play a role, to some degree, in the counter-narcotics strategy. Ultimately, this chapter highlights that, when race is being relied on too heavily in a policing strategy, unintended social consequences create degraded community relations with law enforcement, and exacerbate racial tensions by marginalizing an entire community. The next chapter will provide the historical background of counterterrorism and demonstrate law enforcement's new role in CT-investigations and operations.

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### **III. PREVENTING TERRORISM IN THE UNITED STATES: THE POST-9/11 COUNTERTERRORISM TRANSFORMATION AMIDST A NEW ERA OF HOMELAND SECURITY**

In order to discuss profiling today, it is first necessary to understand how the conduct of counterterrorism has changed since 2001. In this chapter, I present an in-depth overview of the post-9/11 transformation of CT under the umbrella of homeland security and the methods and structure under which counterterrorism is accomplished. The current LE-IC relationship in counterterrorism is built around information sharing. Law enforcement and intelligence agencies have an advanced network of information sharing that is used to track patterns of crime and cross-reference such trends with massive databases of known and suspected terrorists. The end result is that Counterterrorism is now done by every police officer with a radio and patrol-car computer.

In this chapter, I demonstrate how the LE-IC relationship evolved after 9/11. I do this first by highlighting the fundamental differences between the two communities before 9/11. I then show how the law enforcement community characterized its vision for a national counterterrorism architecture that capitalizes on information sharing between the LE and intelligence communities, and how the concept of intelligence-led policing played a key role in such a vision. Then, I highlight the major executive and legislative actions that provided the foundation for a new national CT-architecture. I then demonstrate how the LE-IC interaction functions under the new CT-architecture. This contributes to my thesis by illustrating that it is within this new architecture that complaints of ethnic profiling have rapidly emerged. Many Muslims in the United States feel that they are the targets of a massive sweep by law enforcement and intelligence agencies to root out anyone that engages in political dissent or harbors ill-feelings towards the U.S. and its foreign policy. Demonstrating how counterterrorism is conducted in the post-9/11 era illustrates how the CT-architecture might be used in an

intrusive manner, one that is perceived as purposefully targeting a specific group, such as Arabs and Muslims, under the assumption that members of that group are more likely to engage in terrorism.

#### **A. PRE-9/11 DIFFERENCES BETWEEN THE LAW ENFORCEMENT AND INTELLIGENCE COMMUNITIES**

Prior to 9/11, the U.S. law enforcement community (LE) and the U.S. intelligence community (IC) were two mutually-exclusive entities. On the one hand, the history of law enforcement in the United States holds fast to key objectives, such as criminal justice and investigations, and building a case with evidentiary support to present to the court of law. As such, law enforcement typically “...invokes privacy and investigative case secrecy to protect its information...” and the integrity of the case.<sup>50</sup> On the other hand, the IC has historically been an instrument used to counter foreign threats to the national security of the United States. After all, the IC was created in response to the Japanese attacks on Pearl Harbor in 1941, and later focused its energy and resources on the Soviet Union and its allies during the Cold War.<sup>51</sup>

The relationship of the intelligence and law enforcement communities prior to 9/11 cannot be described as two dichotomous entities with the same overall end goal. On the contrary, the two communities operate on entirely different playing fields, with different rules, different cultures, different styles of play, and even different objectives. The U.S. intelligence community has a long history of protecting its sources and methods to safeguard its capabilities.<sup>52</sup> Law enforcement has a history of public safety by controlling crime and upholding the nation’s civil laws and statutes. It is not surprising that key concepts such as “integration” and “information sharing” have been cited throughout the literature that focuses on the LE-IC relationship building in the post-9/11 era of homeland security.

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<sup>50</sup> National Defense Intelligence College (NDIC), *Improving the Law Enforcement-Intelligence Community Relationship: Can’t We All Just Get Along?* (Washington, D.C.: NDIC Press, June 2007), vii.

<sup>51</sup> Mark M. Lowenthal, *Intelligence: From Secrets To Policy*, 4th ed. (Washington D.C.: CQ Press, 2009), 13.

<sup>52</sup> NDIC, *Improving the Law Enforcement-Intelligence Community Relationship*, vii.

While much of the homeland security literature places an emphasis on improving the communications link between law enforcement and the IC, the IC was primarily in the spotlight after 9/11. The spotlight highlighted a more negative view of the IC. Some intelligence critiques suggest that the intelligence community could not unfasten itself from its methods used during the Cold War, even after the collapse of the Soviet Union in 1991.<sup>53</sup> Those who argue this point posit that the IC's inability to adapt to the growing threat of terrorism in the 1990s was the primary reason it failed to counter the overall threat that terrorism posed to U.S. national security.<sup>54</sup>

The literature suggests that the LE community was also about to undergo a major transformation. Prior to 9/11, law enforcement appeared less concerned with indications and warnings, except within their own jurisdictions, and more concerned with building a case for prosecution.<sup>55</sup> To prosecute a case, the evidence must meet a certain legal standard so that it may be admissible in court.<sup>56</sup> The evidence must also comply with strict custody standards to maintain the integrity of the case under investigation.<sup>57</sup> An exchange of information would likely compromise such integrity. Now, law enforcement is part of a national-level indications and warning process that traditionally fell into the realm of the IC. Additionally, both LE and IC are now developing protocols to legally and effectively share information.<sup>58</sup>

## **B. A NEW APPROACH TO PREVENTING TERRORISM**

The law enforcement community first united with the purpose of imploring the IC to loosen its grip on information pertaining to suspected terrorism shortly after 9/11. In October 2001, the International Association of Chiefs of Police (IACP) called for a

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<sup>53</sup> Amy B. Zegart, *Spying Blind: The CIA, the FBI, and the Origins of 9/11* (Princeton: Princeton University Press, 2007), 3.

<sup>54</sup> *Ibid.* Zegart argues that the failure to see the overall threat of terrorism is a major contribute to the IC's failure to prevent the 9/11 attacks.

<sup>55</sup> *Ibid.*

<sup>56</sup> Mark V. Kauppi, "Counterterrorism Analysis and Homeland Security" in David G. Kamien, ed., *The McGraw-Hill Homeland Security Handbook* (New York: McGraw-Hill, 2006), 416.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*, 425.

summit to discuss the problems with the LE-IC relationship, and to make recommendations to resolve those problems.<sup>59</sup> Already, the role that law enforcement would have in the post-9/11 era of homeland security was clear: Counterterrorism was no longer a term that would be associated with glamorous and super-secret “James Bond” figures. In March 2002, the re-invention of the LE-IC relationship materialized when the IACP’s Intelligence Sharing Summit joined in calling for a totally revamped LE-IC coordination effort, by calling for a national intelligence plan.<sup>60</sup> “The result was the National Criminal Intelligence Sharing Plan (NCISP).”<sup>61</sup>

The NCISP became the blueprint for the now commonplace term in homeland security dialogue: intelligence-led policing.<sup>62</sup> The term itself originated in the Kent Constabulary of Great Britain.<sup>63</sup> The U.S. Justice Department provides an optimal summary of the concept’s origins:

Officials believed that a relatively few number of people were responsible for a comparatively large number of crimes. They believed that police officers would have the best effect on crime by focusing on the most prevalent offenses occurring in their jurisdiction...by prioritizing calls and referring less serious calls for general nonpolice services to other agencies...more time was available to create intelligence units to focus, initially, on property-related offenses in each of the jurisdiction’s nine service areas...Intelligence-led policing focuses on key criminal activities. Once crime problems are identified and quantified through intelligence assessments, key criminals can be targeted for investigation and prosecution.<sup>64</sup>

The IACP stressed adopting this model and argued that it is a proactive guide to policing, i.e., relying on intelligence to guide operations.<sup>65</sup> However, the IACP took this model

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<sup>59</sup> U.S. Department of Justice, Office of Justice Programs, *Intelligence-Led Policing: The New Intelligence Architecture* (Washington D.C., September 2005), 5.

<sup>60</sup> NDIC, *Improving the Law Enforcement-Intelligence Community Relationship*, 8.

<sup>61</sup> *Ibid.*

<sup>62</sup> U.S. Department of Justice, *Intelligence-Led Policing: The New Intelligence Architecture*, 5–7

<sup>63</sup> *Ibid.*, 9.

<sup>64</sup> *Ibid.*

<sup>65</sup> U.S. Department of Justice and International Association of Chiefs of Police, *Criminal Intelligence Sharing: A National Plan for Intelligence-Led Policing At the Local, State, and Federal Levels – Recommendations from the IACP Intelligence Summit* (Washington D.C., August 2002), 13.

several steps further by emphasizing the creation of mechanisms to share criminal intelligence. By this time, the sharing of information implied the sharing of all information on criminal activity, to include terrorist activity.

During the 2002 IACP summit, the participants decided that the model of intelligence-led policing is the most effective and promising way to establish guidelines of sharing criminal intelligence. They defined criminal intelligence as “information compiled, analyzed and/or disseminated in an effort to anticipate, prevent, or monitor criminal activity.”<sup>66</sup> Such guidelines for sharing criminal intelligence would eventually become the template for common operating procedures under which all local, state and federal law enforcement organizations will operate.<sup>67</sup> The template applies to *all* law enforcement agencies, not just the FBI, or the state police, or the police of large municipalities such as the Los Angeles Police Department (LAPD) or the New York City Police Department (NYPD); all law enforcement agencies serving every town, city, county, state, and tribe in America are expected to adopt this new template of criminal intelligence-sharing. To put that in perspective, as of 2004, there were 17,876 state and local law enforcement agencies in the United States, 61% of them were local police departments; nearly half of all state and local law enforcement agencies employed fewer than 10 officers, 31% employed fewer than 5 officers, and 12% employed just one officer.<sup>68</sup>

What does this new template of intelligence-led policing and criminal intelligence-sharing look like? Intelligence-led policing incorporates an age-old doctrine of the IC into investigative procedures of law enforcement, which now include indications and warnings via intelligence analysis. That age-old doctrine is the

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<sup>66</sup> IACP National Law Enforcement Policy Center, “Criminal Intelligence: Concepts and Issues Paper” (International Association of Chiefs of Police, Alexandria, VA, Oct 1998), 3, in U.S. Department of Justice and IACP, *Criminal Intelligence Sharing: A National Plan for Intelligence-Led Policing At the Local, State, and Federal Levels – Recommendations from the IACP Intelligence Summit*, 12.

<sup>67</sup> U.S. Department of Justice and IACP, *Criminal Intelligence Sharing: A National Plan for Intelligence-Led Policing At the Local, State, and Federal Levels – Recommendations from the IACP Intelligence Summit*.

<sup>68</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “State and Local Law Enforcement Statistics (Washington D.C., 2004), available at <http://www.ojp.usdoj.gov/bjs/sandlle.htm> (accessed August 17, 2009).

intelligence cycle. The NCISP follows a six-step process: planning and direction, collection, processing/collation, analysis, dissemination, and re-evaluation, depicted in Figure 2.<sup>69</sup>

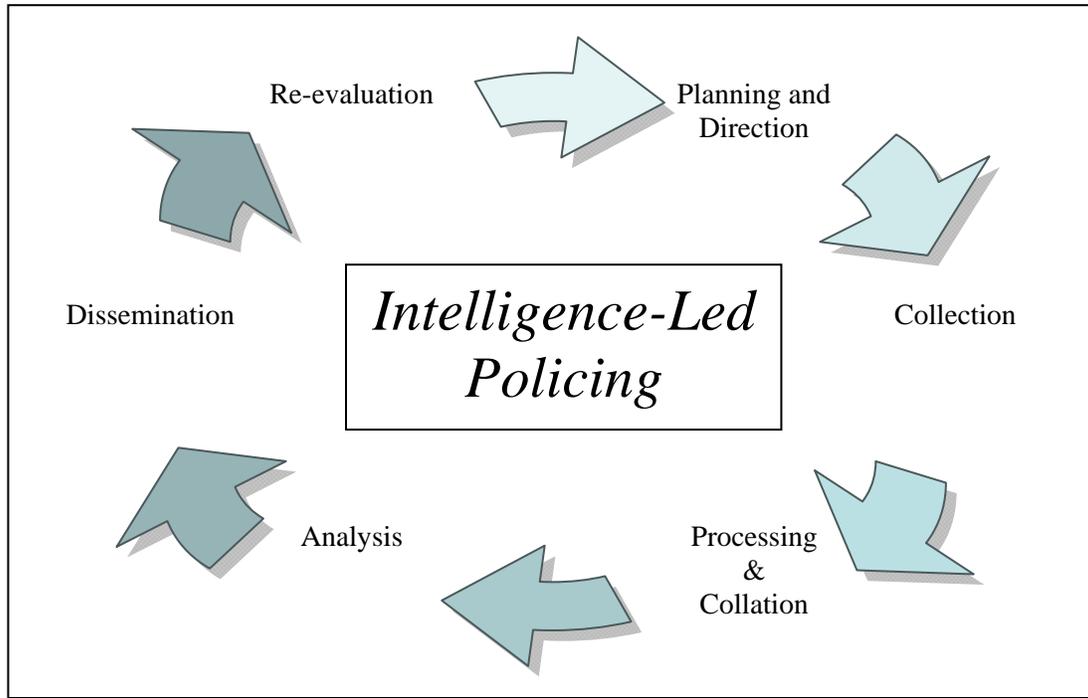


Figure 2. The Intelligence Cycle of Intelligence-led Policing<sup>70</sup>

Each step of the cycle in Figure 2 incorporates specific methods that the law enforcement community now uses in partnership with the intelligence community. These methods are detailed in Figure 3.

<sup>69</sup> U.S. Department of Justice, *Intelligence-Led Policing: The New Intelligence Architecture*, 6.

<sup>70</sup> *Ibid.*

### ***Intelligence-Led Policing***

- (1) Planning and Direction:
  - a. Planning on how data will be collected
  - b. Assess existing data and determine what gaps need to be filled-in
  - c. Guidelines must prohibit illegal methods of obtaining information
  - d. Planning requires a customer or agency to identify the outcomes it wants to achieve from the collection efforts
- (2) Collection:
  - a. Physical surveillance, either in person or by videotape
  - b. Electronic surveillance, either by trap and trace or by wiretap
  - c. Confidential informants
  - d. Undercover operations
  - e. Open sources such as newspaper reports, internet sites, blogs, etc
  - f. Public records, such as deeds or tax records
- (3) Processing & Collation:
  - a. Sifting through data, eliminate useless data, place data in logical order
  - b. Data-mining and text-mining technology
  - c. Evaluate data on reliability and validity
- (4) Analysis:
  - a. Convert information to intelligence
  - b. Determine further leads
  - c. Develop conclusions
  - d. Make recommendations
- (5) Dissemination:
  - a. Getting the information to those who need it to those that have the right to use it in whatever form deemed appropriate
- (6) Re-evaluation:
  - a. Examine the product to determine its effectiveness, part of this comes from the customer, or those that are using the intelligence, providing feedback on missing data or holes to begin the process again

Figure 3. The Intelligence Cycle of Intelligence-Led Policing<sup>71</sup>

At this point in the transformation of the law enforcement and intelligence communities, two concepts are beginning to merge. Those two concepts are the early architecture of the NCISP, and the cycle of intelligence-led policing and its individual components. A product of the merger is the establishment of a framework that combines

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<sup>71</sup> U.S. Department of Justice, *Intelligence-Led Policing: The New Intelligence Architecture*, 6-7.

a bottom-up feeder network for the flow of criminal data, information, statistics and trends, with the technology to fuse all of that information into one giant mixing and sorting mechanism. Figure 4 describes this new “fusion” architecture. This mechanism creates the potential for levels of analysis of criminal intelligence that reaches well beyond jurisdictional boundaries. The mechanism that mixes and sorts all the data being fed into it by law enforcement agencies is called a fusion center. The fusion center not only changes the way law enforcement approaches crime control, but it opened the aperture for the key role that law enforcement officers, in all agencies regardless of their size, play in CT-operations. However, the realization of fusion centers was still several years off.

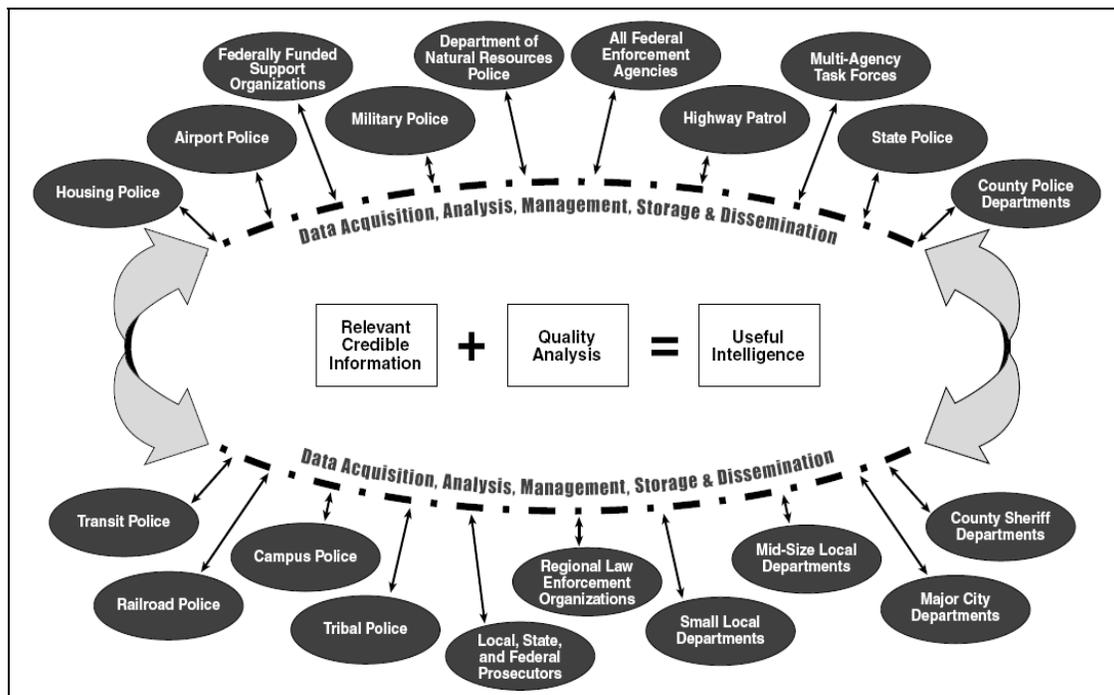


Figure 4. Conceptual Framework of the National Criminal Intelligence Sharing Architecture<sup>72</sup>

<sup>72</sup> U.S. Department of Justice, *Intelligence-Led Policing: The New Intelligence Architecture*.

### C. LEGISLATIVE GROUNDWORK: THE NATIONAL STRATEGY FOR HOMELAND SECURITY AND THE HOMELAND SECURITY ACT

By the end of 2002, the law enforcement community fully understood that CT needed to be incorporated into its policing tactics. The key instrument to incorporating CT into all levels of law enforcement is intelligence. While the NCISP continued to develop through the concept of intelligence-led policing, a key strategic document was about to be released by the Chief Executive. The 2002 *National Strategy for Homeland Security*, promulgated by former President George W. Bush via the Office of Homeland Security, formalized the vision for a methodical transformation of counterterrorism and homeland security.<sup>73</sup> Moreover, the National Strategy for Homeland Security increased the momentum of transforming domestic CT-operations.

The National Strategy for Homeland Security is a comprehensive vision for preventing terrorist attacks in the United States. While it clearly discusses restructuring the way the U.S. responds to emergencies, its primary emphasis is on the prevention of terrorism.<sup>74</sup> The 2002 Strategy identifies six critical mission areas: Intelligence and Warning, Border and Transportation Security, Domestic Counterterrorism, Protecting Critical Infrastructure and Key Assets, Defending Against Catastrophic Threats, and Emergency Preparedness and Response.<sup>75</sup> Across the entire spectrum of critical mission areas, the Strategy invokes the two key ideas being discussed in this review that transformed the nature of CT-operations:

- (1) “Reorienting law enforcement organizations to focus on counterterrorism objectives.”<sup>76</sup>
- (2) “Streamline information sharing among [and between] intelligence and law enforcement agencies.”<sup>77</sup>

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<sup>73</sup> The Office of Homeland Security was established via Executive Order (E.O.) 13228, signed by President Bush on October 8, 2001. Section 2 of the E.O. called for the “development and implementation of a national strategy to secure the United States from terrorist threats or attacks.” From the text of E.O. 13228, on the Federation of American Scientists Web site, available at <http://www.fas.org/irp/offdocs/eo/eo-13228.htm> (accessed June 15, 2009).

<sup>74</sup> Office of Homeland Security, *National Strategy for Homeland Security* (Washington D.C.: July 2002).

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, ix.

After the 2002 National Strategy for Homeland Security was published, there was no question about the role that law enforcement would have in domestic CT-operations, and no question that mechanisms for information sharing would be central to improving the efficacy of such operations.

After the release of the 2002 National Strategy for Homeland Security, several key events occurred. The first and most instrumental of these events was the signing of the Homeland Security Act on November 25, 2002.<sup>78</sup> With regard to the traditional impediments that stand between the law enforcement and intelligence communities, the language of the Homeland Security Act of 2002 articulates, as law, mechanisms for improving information availability. Several examples of such mechanisms exist in the Homeland Security Act. One example of an important mechanism that is designed to do away with barriers to information sharing among and between the LE-IC is provided here, it states:

Any investigative or law enforcement officer...[who] has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat.<sup>79</sup>

The importance of this language is that it is a step towards breaking the IC from its traditional ways of protecting its methods and sources during the collection process of the intelligence cycle (see Figure 3), all in the name of preventing, among other threats, terrorism. Similarly, with law enforcement traditionally clinging to protecting the access and custody of evidence for use in investigating and prosecuting a case, this language

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<sup>77</sup> Office of Homeland Security, *National Strategy for Homeland*, x.

<sup>78</sup> Text of the *Homeland Security Act of 2002* (Public Law 107-296), on the Department of Homeland Security Web site, available at [http://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf) (accessed July 12, 2009).

<sup>79</sup> *Ibid.*, Section 896, subparagraph 8.

also provides the legal precedent for sharing information to other agencies; again, all in the name of preventing terrorism. Essentially, it is a major leap in eliminating the deeply-rooted historical impediments to information sharing that I presented earlier in this review.

The Homeland Security Act of 2002 also established the Department of Homeland Security (DHS).<sup>80</sup> Albeit a massive reorganization of the USG, the establishment of DHS as a cabinet-level department of the Chief Executive is a major overhaul in the way this country is organized, to prevent and respond to terrorism. The responsibilities of DHS are broad and far-reaching. The original mandate of DHS, as prescribed in the Homeland Security Act of 2002, is to prevent terrorist attacks at home, reduce the vulnerability to terrorist attacks at home, and to minimize the damage and assist in the recovery from any attacks that may occur.<sup>81</sup> More specifically, DHS plays a key role in the transformation of the law enforcement and intelligence communities.

The Department of Homeland Security is not only granted sweeping access to intelligence, of any content and source, but it plays a primary role in improving the sharing of such information within the new LE-IC framework.<sup>82</sup> Title II of the Homeland Security Acts directs the creation on an Under Secretary position that is responsible for information analysis. Here, the language is very specific:

- (1) To access, receive and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State, and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—
  - a. Identify and assess the nature and scope of terrorist threats to the homeland
  - b. Detect and identify threats of terrorism against the United States

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<sup>80</sup> *Homeland Security Act of 2002* (Public Law 107-296), Title I.

<sup>81</sup> Willard M. Oliver, *Homeland Security for Policing* (New Jersey: Prentice Hall, 2007), 74.

<sup>82</sup> *Ibid.*, 75.

- c. Understand such threats in light of actual and potential vulnerabilities of the homeland.<sup>83</sup>

This clause highlights that the mechanisms for improving information sharing for the purpose of preventing terrorist attacks are now becoming more narrowly defined. Keywords such as *integrate*, *identify*, *assess*, *detect*, and *understand* all echo the comprehensive nature of how CT-operations will take shape in the United States. Additionally, the Under Secretary position is responsible for the following:

To review, analyze and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.<sup>84</sup>

Title II of the Homeland Security Act of 2002 specifically targets the creation of methods, procedures, policies, and entities that will together act as a system for the sharing of information pertaining to potential terrorist threats among and between the law enforcement and intelligence communities.

#### **D. CENTRAL AND SHARED KNOWLEDGE MERGES WITH JOINT INTEROPERABILITY**

Following the signing of the National Strategy for Homeland Security and the Homeland Security Act, the next key events to the transformation of domestic CT-operations are the creation of the Terrorist Threat Integration Center (TTIC) and Terrorist Screening Center (TSC). Like the many provisions of the National Strategy for Homeland Security and Homeland Security Act, the establishment of these two institutions further drives the transformation of CT-operations, and brings that transformation to fruition. The TTIC (pronounced “tee-tick”) and TSC become tools of the law enforcement and intelligence communities to warehouse the names, along with their history of contact with law enforcement, of specific individuals that are considered

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<sup>83</sup> *Homeland Security Act of 2002*, Title II, Subtitle A, sec. 201 (d)(1).

<sup>84</sup> *Homeland Security Act of 2002*, Title II, Subtitle A, sec. 201 (d)(8).

persons of interest in the quest to prevent terrorism in the United States.<sup>85</sup> Moreover, both the TTIC and TSC bring about the first set of sweeping reactions from the public, especially from those of Muslim identity.

The intention to create the Terrorist Threat Integration Center first became public knowledge in January 2003. In the 2003 State of the Union address, President Bush announced that he is:

...instructing the leaders of the FBI, the CIA, the Homeland Security, and the Department of Defense to develop a Terrorist Threat Integration Center, to merge and analyze *all* [emphasis added] threat information in a single location.<sup>86</sup>

The TTIC embodied promise for the integrated capabilities such an agency can bring to the counterterrorism transformation, but is surrounded in controversy because of its organizational attachment to the Central Intelligence Agency (CIA), and because of its most significant assessment product: the consolidated master terrorist watch list. The TTIC was directed to play a lead role in overseeing a national CT-tasking and requirements system, maintaining shared databases, and maintaining an up-to-date master database of known and suspected terrorists.<sup>87</sup>

The creation of the TTIC instigates some early signs of the public's general concern about the CIA conducting domestic intelligence operations in the United States, with no apparent accountability. Most notably, the ACLU immediately opened a lobbying campaign to urge congress to institute measures that prohibit the CIA from using its foreign intelligence methods on American soil.<sup>88</sup> However, even the ACLU

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<sup>85</sup> William K. Krouse and Congressional Research Service. CRS Report for Congress, RL32366, *Terrorist Identification, Screening, and tracking Under Presidential Directive 6*, Updated December 23, 2004 (Washington, D.C.: The Library of Congress).

<sup>86</sup> The White House. Office of the Press Secretary, *President Delivers "State of the Union,"* The U.S. Capitol, January 28, 2003.

<sup>87</sup> Text of the "Fact Sheet: Strengthening Intelligence to Better Protect America," released by The White House, January 28, 2003, on the Memorial Institute for the Prevention of Terrorism (MIPT), Lawson Terrorism Information Center Web site at [http://www.terrorisminfo.mipt.org/ttic\\_whfs.asp](http://www.terrorisminfo.mipt.org/ttic_whfs.asp) (accessed September 27, 2009).

<sup>88</sup> American Civil Liberties Union (ACLU), *ACLU Urges Congress to Put in Place Guidelines to Prevent Civil Liberties Abuses by New Intelligence Umbrella Agency*, July 22, 2003, available at <http://www.aclu.org/safefree/general/16794prs20030722.html> (accessed September 28, 2009).

later went on the record to recognize the necessity of domestic surveillance, but qualified its position by stating that domestic surveillance must serve the goals of preventing terrorism, espionage, and other serious crimes, not the political goals of the Chief Executive.<sup>89</sup> To this end, the ACLU seemed more concerned about the lack of any form of accountability through Congressional oversight, and the potential for civil liberties abuses that could result.

Negative reactions to the proposed structure of the TTIC also resided in Congress. Concerns emanating from Congress generally echoed those of the ACLU. For example, some members of Congress feared that the creation of the TTIC could impede the statutory mandate of DHS described earlier in this review. Select members of the House of Representatives Committee on Homeland Security questioned why the TTIC needed to report to the Director of CIA vice the U.S. Attorney General or the Director of DHS, citing the dangerous potential for using the foreign intelligence services in the capacity of an unchecked domestic intelligence program.<sup>90</sup> Congressman Christopher Cox (R-CA), who chaired the Committee when the hearing was held in July 2003, stated that such activity would re-open a “sad chapter in [American] history that must remain closed.”<sup>91</sup>

Much of the Committee was inherently against the creation of the TTIC under its current configuration, and expressed deep concern for the implications of placing the agency under the CIA. Placing the agency under the CIA stands in contradiction of the DHS statutory mandate under the 2002 Homeland Security Act. There was also some speculation that the White House’s decision to do so is deliberate in order to cloak its intentions to expand a sweeping and unimpeded domestic intelligence program within the United States. The committee asserted its viewpoint that the TTIC adds confusion to which agency will be the primary conduit for CT-information sharing, and made its

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<sup>89</sup> Text of the “ACLU Statement for the Record at a Hearing before the Senate Judiciary Committee on ‘The 9/11 Commission and Recommendations for the Future of Federal Law Enforcement and Border Security’”, August 19, 2004, on the ACLU Web site at <http://www.aclu.org/natsec/emergpowers/14496leg20040819.html> (accessed October 2, 2009).

<sup>90</sup> United States. Congress. House. Committee on the Judiciary, *108-1 Joint Hearing: Terrorist Threat Integration Center (TTIC) and its Relationship with the Departments of Justice etc.*, Serial no.64, July 22, 2003, 5.

<sup>91</sup> *Ibid.*

position clear that our nation’s “carefully crafted and vitally important civil liberties” would be better protected with the TTIC placed under DHS.<sup>92</sup>

The Terrorist Screening Center (TSC) is another entity that brings the transformation of CT-operations to fruition. Homeland Security Presidential Decision Directive Six (HSPD-6) announced the creation of the TSC.<sup>93</sup> The TTIC and TSC should not be viewed as two mutually exclusive entities. On the contrary, the TTIC feeds, or disseminates, its complete threat analysis data into the TSC database, but that data is limited to international suspects; the FBI feeds data on domestic suspects.<sup>94</sup> After both Congress and DHS voiced their concerns over the dangers of the TTIC conducting domestic intelligence operations, the TTIC’s mandate focused only on compiling threat data of known or suspected terrorists of international origin, but the TTIC would soon become part of a larger organization.

Local, state, and federal joint LE-IC interoperability is finally established when the capabilities of the TSC meet law enforcement databanks. The primary databank is the National Crime Information Center (NCIC). The NCIC is a national database of individual criminal histories, or files, that have the ability to reach to every state and local [police] patrol car computer or personal radio.<sup>95</sup> The NCIC also contains information on wanted persons, missing persons, stolen cars, and stolen property; law enforcement

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<sup>92</sup> United States. Congress. House. Committee on the Judiciary, *108-1 Joint Hearing: Terrorist Threat Integration Center (TTIC) and its Relationship with the Departments of Justice etc.*, Serial no.64, July 22, 2003, 8.

<sup>93</sup> William K. Krouse and Congressional Research Service. CRS Report for Congress, RL32366, *Terrorist Identification, Screening, and tracking Under Presidential Directive 6*, Updated December 23, 2004 (Washington, D.C.: The Library of Congress).

<sup>94</sup> United States. Congress. House. Committee on the Judiciary, *Progress in Consolidating Terrorist Watchlists—the Terrorist Screening Center (TSC)*, 108-2 Joint Hearing, Serial no. 86, March 25, 2004.

<sup>95</sup> *Ibid.*, 19.

officers refer to such files as “hot” files.<sup>96</sup> Before the inception of the TSC, there was no established connection between the NCIC and the TSC.<sup>97</sup>

After approximately one year of operating as a fully-functioning integrated terrorist threat analysis center, the TTIC was subsumed into the newly-established National Counterterrorism Center (NCTC), which is a component of the Office of the Director of National Intelligence (DNI). Among other important roles, such as conducting the terrorist threat matrix in the *President’s Daily Brief* (PDB), the NCTC maintains an “all-source datamart on terrorist identities for use by the entire CT-community...” otherwise known as the Terrorist Identities Datamart Environment (TIDE).<sup>98</sup> The TSC is now fully operational. According to Jerry Berman, the President of the Center for Democracy and Technology in 2004, the consolidated watchlist comprised approximately 50,000 known or suspected terrorists, and that number is not just made up of individuals with ties to Islamic terrorist organizations, but also includes individuals with affiliations to any group that has conducted a terrorist act.<sup>99</sup> By 2007, the master list allegedly grew to near 800,000 known or suspected terrorists of domestic and international origins.<sup>100</sup>

The most important aspect of the TSC to the transformation of CT-operations in the United States is that the TSC is the primary hub that links investigative efforts of all local law enforcement officers, from any jurisdiction in the nation, with the FBI’s

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<sup>96</sup> United States. Congress. House. Committee on the Judiciary, *Progress in Consolidating Terrorist Watchlists—the Terrorist Screening Center (TSC)*, 108-2 Joint Hearing, Serial no. 86, March 25, 2004.

<sup>97</sup> According to James McMahan, the Director of the Office of Public Security in New York in 2004, “...there was no systematic way to conduct a search of the various federal databases to ascertain if a suspicious person had any ties to an ongoing investigation.” See United States. Congress. House. Committee on the Judiciary, *Progress in Consolidating Terrorist Watchlists—the Terrorist Screening Center (TSC)*, 20.

<sup>98</sup> National Counterterrorism Center (U.S.), *NCTC and Information Sharing Five Years since 9/11* (McLean, VA: National Counterterrorism Center, 2006) available at <http://purl.access.gpo.gov/GPO/LPS81227> (accessed October 10, 2009).

<sup>99</sup> United States. Congress. House. Committee on the Judiciary, *Progress in Consolidating Terrorist Watchlists—the Terrorist Screening Center (TSC)*, 22.

<sup>100</sup> Mimi Hall, “Terrorist Watch List Keeps Ballooning; Nearing 800,000 Names, List Called ‘Cumbersome,’” *USA Today*, sec. News, October 24, 2007.

counterterrorism division.<sup>101</sup> The compatibility of NCIC and TSC puts every law enforcement officer in the nation on the front lines of counterterrorism, i.e., this is where the crucial “exchange of relevant information” now begins.<sup>102</sup> Essentially, this is the nucleus of modern counterterrorism investigations and operations.

The NCIC and TSC exchange uses an input/output process by cross-referencing all throughput information with the data warehoused in the TSC. James McMahon, the Director of the Office of Public Security in the State of New York in 2004 testified before a Joint Hearing in the House of Representatives and provided a detailed description of the exchange between NCIC and TSC. I have summarized this process. Typically, there are three scenarios that a patrol officer or detective might expect when they encounter a person during a traffic stop or ongoing investigation:

- (1) “Red Light” Stop: the officer conducts a name and date of birth (DOB) query in NCIC; NCIC returns information sufficient to arrest the subject, such as being wanted by another state or local jurisdiction.
- (2) “Green Light” Stop: based on the name and DOB inquiry, the person stopped is not actively wanted by any law enforcement agency.
- (3) “Yellow Light” Stop: the individual the police officer detained or stopped is not actively wanted, but the officer has suspicions about whether the individual has links to terrorism, for example, the individual was seen videotaping public transportation infrastructure or nuclear power plants.<sup>103</sup>

During the NCIC inquiry of a “Yellow Light” stop, the officer might receive a return from NCIC, or “hit,” known as a Violent Gang and Terrorist Organization File (VGTOF), marking the individual as a person of interest.<sup>104</sup> This “hit” will direct the officer to contact the Terrorist Screening Center for additional direction; the TSC will provide additional information in any one of four classifications: arrest, detain, investigate or

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<sup>101</sup> United States. Congress. House. Committee on the Judiciary, *Progress in Consolidating Terrorist Watchlists—the Terrorist Screening Center (TSC)*, 5.

<sup>102</sup> *Ibid.*, 20.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

query.<sup>105</sup> Meanwhile, when the situation necessitates, the TSC coordinates with the FBI's counterterrorism division for the local Joint Terrorism Task Force (JTTF) to begin coordinating and sharing information pertaining to the investigation with the state or local law enforcement officer.

The newly-established interoperability of the TSC and the NCIC databases means that CT-operations have the eyes, ears, intuition, and training of over 800,000 sworn local, state, and federal law enforcement officers in the United States.<sup>106</sup> Figure 5 depicts a simple diagram illustrating the new role that all law enforcement officers now play in domestic CT-operations. It seems that the visions and recommendations of the IACP, and many others, are now realized in a modern national CT-network.

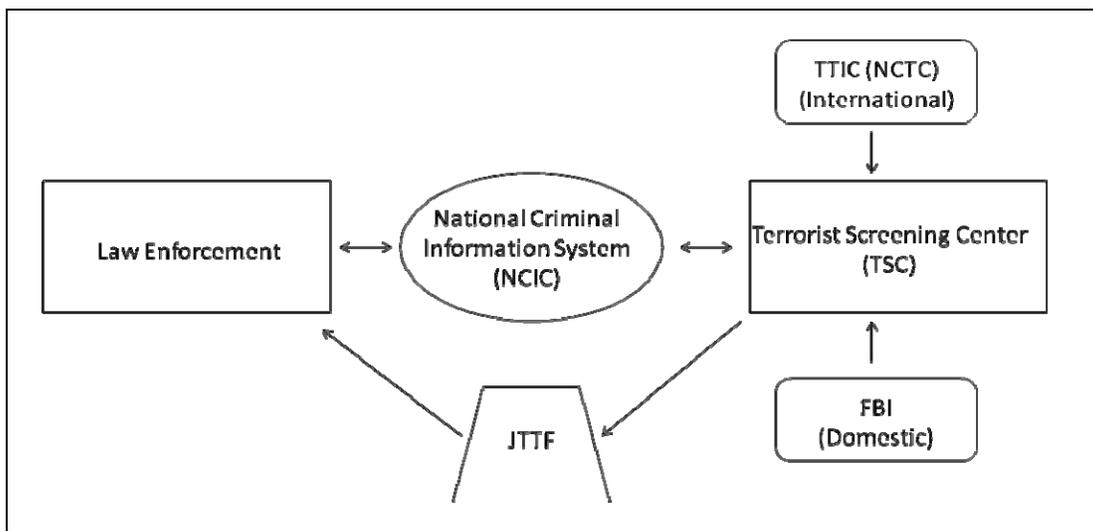


Figure 5. Law Enforcement Role in CT-operations

By mid-2004, the newly-articulated environment of intelligence-driven counterterrorism had substantially altered pre-9/11 barriers that previously obstructed law enforcement's reach into the spectrum of CT-operations. This new landscape of LE-IC

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<sup>105</sup> United States. Congress. House. Committee on the Judiciary, *Progress in Consolidating Terrorist Watchlists—the Terrorist Screening Center (TSC)*, 20.

<sup>106</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "State and Local Law Enforcement Statistics" (Washington D.C., 2004), available at <http://www.ojp.usdoj.gov/bjs/sandlle.htm> (accessed August 17, 2009).

integration is summarily described by FBI Director Robert Mueller in his 2004 testimony before the National Commission on Terrorist Attacks upon the United States:

Prior to Sept. 11, 2001...various walls existed that prevented the realization of that vision. Legal walls—real and perceived—prevented the integration of intelligence and criminal tools in terrorism investigations. Cultural walls—real and perceived—continued to hamper coordination between the FBI, the CIA and other members of the intelligence community. Operational walls—real and perceived—between the FBI and our partners in state and local law enforcement continued to be a challenge...the legal walls between intelligence and law enforcement operations that handicapped us before 9/11 have been eliminated.<sup>107</sup>

Here, Director Mueller highlights that the cultural and legal barriers to criminal-intelligence sharing have diminished to a point of minimal resistance. Meanwhile, the architecture for the criminal-intelligence sharing network is advancing at a rapid rate of expansion via the widespread construction of fusion centers across the United States.

#### **E. STATE AND REGIONAL “FUSION CENTERS” EMERGE**

By this stage of the transformation of CT-operations in the United States, the concept of fusing information from all sources is rapidly being implemented in the federal government. Counterterrorism capacity building of the federal law enforcement and intelligence agencies is now heavily intelligence-centric, and rapidly expanding its integrated network. It appears that the concepts founded in the original NCISP are now being realized at the national level, and are already being realized at the state and local levels, as well, through the joint interoperability of the NCIC and TSC. Meanwhile, the public is expressing growing concerns for such a broadened capacity and its implications to the protection of their civil liberties. Those concerns will deepen as the capacity for collecting and merging information on individuals, their backgrounds, and their activities within the United States expands into the creation of state and regional “fusion” centers across the nation.

Recall that when the Kent Constabulary in Great Britain developed the concept of intelligence-led policing, it focused on identifying and prioritizing patterns of crime.

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<sup>107</sup> "Hearings on Sept. 11 Attacks; Robert Mueller; the FBI 'must be Intelligence-Driven'." *Los Angeles Times*, April 15, 2004.

Fusion centers also focus on identifying and prioritizing patterns of crimes.<sup>108</sup> Once crime trends are identified, they can be prioritized. Moreover, a strategy can be developed to focus on the trend, such a strategy will take into account several factors, such as: where the pattern of crime is occurring, they type of crime, and the criminal elements involved. In essence, fusion centers follow an “all crimes” approach, built around the concept of intelligence-led policing.<sup>109</sup> This approach was part of the foundational groundwork of the information sharing network established between the law enforcement and intelligence communities, and the same approach is being built into the concept of the fusion center.

The fusion center is a direct descendant of the NCISP. The Justice Department defines a fusion center as:

...a collaborative effort of two or more agencies that provide resources, expertise, and information to the center with the goal of maximizing their ability to detect, prevent, investigate, and respond to criminal or terrorist activity.<sup>110</sup>

The most fundamental idea behind the fusion center, aside from intelligence-led policing, is that “good policing is good terrorism prevention.”<sup>111</sup> One representative of the Arizona Counterterrorism Information Center (AcTIC) was quoted as stating:

We call our approach all-crimes...that include terrorism because there are numerous types of crimes that are associated with terrorism: money laundering, fraud, money being put toward the support of terrorist acts...<sup>112</sup>

This follows the argument that crime prevention and the prevention of terrorism are inter-related.<sup>113</sup>

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<sup>108</sup> U.S. Department of Justice, *Intelligence-Led Policing: The New Intelligence Architecture*, 6–10

<sup>109</sup> *Ibid.*, 9.

<sup>110</sup> U.S. Department of Justice, *Fusion Center Guidelines: Developing and Sharing Information and Intelligence in a New Era* (Washington D.C., August 2006), 3.

<sup>111</sup> U.S. Department of Justice, *Intelligence-Led Policing: The New Intelligence Architecture*, 9.

<sup>112</sup> Michael Fickes, “The Power of Fusion,” *Government Security*, March 1, 2008, 12.

<sup>113</sup> *Ibid.*, 10.

Fusion centers bring together dozens of agencies and entities from the private sector in an inter-agency environment. During the period from 2004–present, the all-crimes approach to the fusion centers is realized across the nation. In larger states, there may be as many as four regional fusion centers to cover the entire region; however, each state essentially has one primary designated fusion center. According to the National Fusion Center Coordination Group (NFCCG), as of January 2009, all 50 states now have fusion centers set up and functioning as intelligence analysis centers for their designated regions.

**F. THE GLOBAL WAR ON TERRORISM: THE ONE PERCENT DOCTRINE AND THE USA PATRIOT ACT**

Ron Suskind's *The One Percent Doctrine: Deep Inside America's Pursuit of its Enemies Since 9/11* details first- and second-hand accounts of the actors that perpetrated the 9/11 terrorist attacks, and the actors that shaped America's response. He delivers an inclusive account of the primary mover that grabbed hold of the United States' top public executives, intelligence chiefs, and law enforcement agents, and propelled them, along with the entire nation, into the *war on terror*. Suskind describes this primary mover as the one-percent doctrine. The one-percent doctrine is a way of thinking that stipulates that if there is a one-percent chance of a WMD event occurring on the U.S. homeland, than the U.S. must treat it as a certainty.<sup>114</sup> The one-percent doctrine began with Dick Cheney commenting on intelligence that led CIA officials to believe that Pakistani scientists could be helping Al-Qaeda construct a nuclear weapon.<sup>115</sup> Cheney's conclusion was the catalyst for the expedient quest to find and prevent a terrorist organization from using a weapon of mass destruction in the United States.

The reality of the post-9/11 era is personified in the one-percent doctrine, which incited the FBI and CIA to attempt to find a trail that, in some cases, never existed. Racing through the minds of the men charged to *find them, stop them*, as Suskind puts it, “was an impossible fight, that the enemy could be anywhere, plotting, unseen,

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<sup>114</sup> Ron Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of its Enemies Since 9/11* (New York: Simon and Schuster Paperbacks, 2006), 62.

<sup>115</sup> *Ibid.*, 61–62.

undetectable, and that they couldn't stop thinking about buildings burning and planes and bombs in malls, night after night."<sup>116</sup> If there ever were a strategy to define the U.S.'s post 9/11 CT-strategy, the one-percent doctrine was the unwritten dogma of such strategy.

If the one-percent doctrine is an unwritten dogma that might be guiding some of the law enforcement and intelligence agencies, the USA PATRIOT Act is the legal framework that gives law enforcement and intelligence agencies broader and, as some claim, more discretionary powers in operating under the new architecture of counterterrorism. A complete analysis of the Patriot Act is not within the scope of this thesis. The Patriot Act is important to this thesis, however, because it might be seen as the enabling force that was seen as an intrusive tool used to root out individuals within the Muslim community that harbor political dissent or ill-feelings towards the USG and its foreign policy.

It is not enough to consider events of racial, ethnic, or religious profiling and argue the utility or disutility of such a technique without framing the discussion in greater context. The greater context is the Global War on Terrorism (GWOT). Two events that demonstrate the tone within the USG following 9/11 are the one-percent doctrine and the passing of the USA PATRIOT Act. The two concepts cast a permanent shadow over the transformation of CT-operations and, together, they catalyze the manifestation of widespread fear and suspicion of Muslims in U.S. society, which is often the primary rationale behind arguments that favor profiling individuals of Muslim identity.

## **G. CONCLUSION**

In sum, the current LE-IC relationship in counterterrorism is built around information sharing. Law enforcement and intelligence agencies have an advanced network of information sharing that is used to track patterns of crime and cross-reference such trends with massive databases of known and suspected terrorists. The end result is that Counterterrorism is now done by every police officer with a radio and patrol-car computer. I recognize the challenge in depicting the entire transformation in a single

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<sup>116</sup> Suskind, *The One Percent Doctrine*, 283.

visualization. Nevertheless, this framework depicted in Figure 6 describes the enablers of CT techniques now used by law enforcement. The new architecture of counterterrorism is composed of a heterogeneous mixture of new legal precedents, specifically pertaining to domestic intelligence collection, and new methods of crime control that is accomplished by analyzing patterns of crime and prioritizing resources, as described in the framework of intelligence-led policing.

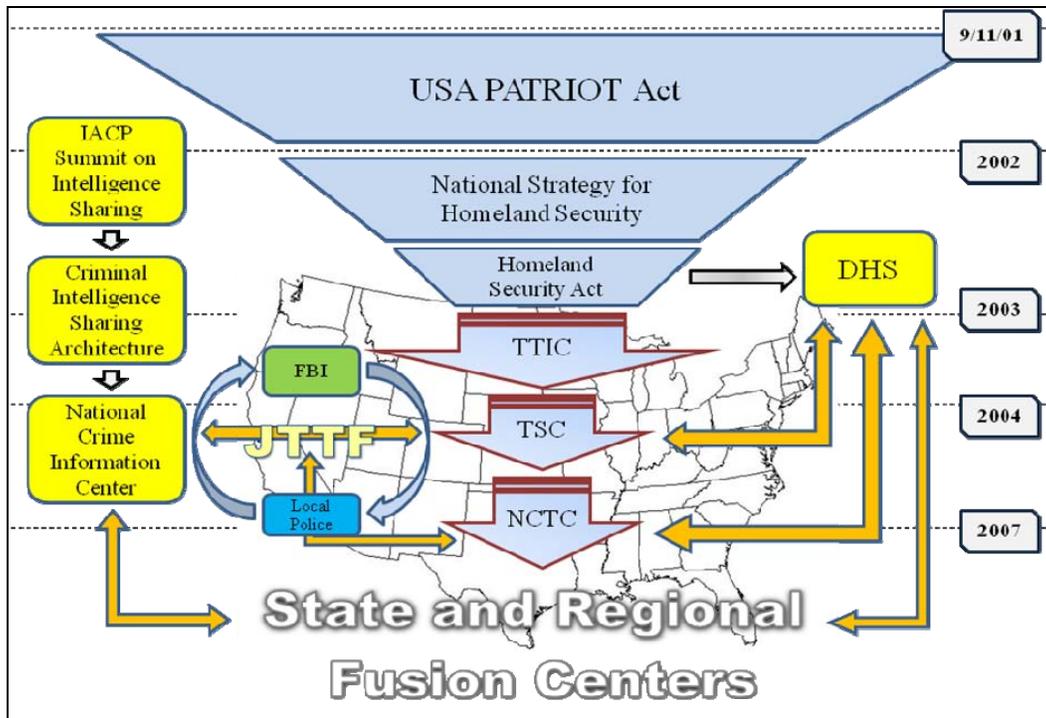


Figure 6. Post-9/11 LE-IC Transformation of CT-operations<sup>117</sup>

It is within this new architecture that complaints of ethnic profiling have rapidly emerged. Many Muslims in the United States feel that they are the targets of a massive sweep by law enforcement and intelligence agencies to root out anyone that engages in political dissent or harbors ill-feelings towards the U.S. and its foreign policy. In understanding the new architecture of counterterrorism and the role of law enforcement, it becomes more apparent that the tools for counterterrorism are broad and susceptible to

<sup>117</sup> Figure is the author's original depiction with the exception of the map of USA, available at [www.geography.about.com/library/blank/usa3.jpg](http://www.geography.about.com/library/blank/usa3.jpg) (accessed October 3, 2009). I recognize that this does not depict every relationship that now exists under the current LE-IC structure of CT-interoperability. It does, however, adequately summarize the complexity of the general post 9/11 transformation.

abuse. This will become important in my final chapter, where I attempt to illustrate what actual law enforcement officers do use in their rationale for reasonable suspicion and probable cause, the main finding of such an exploratory survey suggests that law enforcement officers are well aware of the perils of relying too heavily on factors such as race, ethnicity and religion, and there are dozens of visual and behavioral indicators that law enforcement officers use that do not rely on such factors.

In the next chapter, I present and argue two hypotheses that support the claim that profiling Muslims is actually counterproductive to an effective long-term CT-strategy. While the I-95 case study indicated that, assuming profiling was in fact used, the technique was successful in finding drug dealers. This suggested that similar results might be found when applying the technique to Muslims in CT-operations. However, the arguments that I present in Chapter IV suggest that the social costs of profiling Muslims are not only just as high, if not higher, but that the technique is more than likely counterproductive, i.e., it will actually work against an effective long-term CT-strategy. Chapter IV highlights that framing profiling in greater context, such as issues of identity, assimilation and integration, and the strategy and objectives of Islamic terrorist organizations indicate that profiling Muslims works against an effective long-term CT-strategy. Lastly, I will attempt to illustrate that, while the perception of ethnic profiling persists among members of the Muslim community, the technique does not appear to have played a role in the disruption of actual terrorist plots.

#### IV. ETHNIC AND RELIGIOUS PROFILING IN THE CONTEXT OF PREVENTING TERRORISM

*This was racial profiling...We know these boys. They are just like us. We watch them play soccer. We pray with them. We know their parents and their brothers and sisters and wives. If these six are suspects, then so is everyone else.*

*-Neighbors of Lackawanna Six Terror Cell, Lackawanna, NY*

In this chapter, I argue that ethnic and religious profiling is counterproductive to an effective long-term counterterrorism strategy. I do this by presenting and examining two hypotheses that support this claim: first, that profiling affects issues involving identity and exacerbates the sense of social and political detachment of Muslims living in the United States, which could increase the propensity for radicalization. Second, that profiling plays directly into the strategy of Islamic terrorist organizations and further weakens the United States by isolating and dividing it, both internally and externally. Next, I illustrate that, while complaints of ethnic profiling have existed since 9/11, the technique does not appear to have been used by law enforcement in the disruption of actual terrorist plots. I do so by presenting an in-depth analysis of twelve Islamic terrorist plots that have been foiled by law enforcement since 9/11 and highlighting that the disruption of these plots does not appear to have involved any form of racial, ethnic or religious profiling.

The primary scope of this chapter is to present the findings that support the claim that profiling Muslims might be considered counterproductive to an effective long-term CT-strategy. My primary findings suggest that profiling Muslims is counterproductive to an effective long-term CT-strategy for the following reasons:

- (1) *Profiling Muslims—either real or perceived, increases the extent that members of the Muslim diaspora feel marginalized or in a state of isolation from their receiving society vis-à-vis the United States.*

The knowledge we have about the relationship between identity, including integration and assimilation, and the factors that lead to radicalization within the Muslim diaspora

suggests that profiling actually increases an individual's social and political detachment from the host society. The increased sense of social and political detachment, in turn, makes the use of violence to defend an identity a more attractive alternative. For these reasons, ethnic profiling does not appear to be an effective tool in a long-term strategy to preventing terrorism.

The second reason follows from an understanding of the objectives and strategy of Islamic terrorist organizations:

- (2) *Profiling Muslims—either real or perceived, essentially plays directly into the strategy of Islamic terrorist organizations, in effect, aiding their legitimacy within the Muslim diaspora and opening the aperture for the recruiting efforts of radical Islamic social networks.*

There are supporting arguments to this finding. Grievances of Islamic terrorist organizations generally stem from accusations of racism and disrespect for human rights. The objectives of Islamic terrorist organizations such as Al-Qaeda are to undermine, isolate, and divide the United States. The strategy is to use our own democratic principles of civil liberties against us, and draw the U.S. into a trap by portraying itself as fundamentally racist and willing to arbitrarily forego even its own democratic principles. This suggests that ethnic profiling actually aids Islamic terrorist organizations by demonstrating to their target Muslim population that the U.S. is against them.

#### **A. WHY PROFILING MUSLIMS IS COUNTERPRODUCTIVE TO AN EFFECTIVE CT-STRATEGY**

There are many opponents to profiling who view ethnic profiling of Muslims as counterproductive to preventing terrorism simply because it is a violation of our constitutional civil liberties and contradictory to our democratic values. On the other hand, there are many who argue that ethnic profiling of Muslims is simply a common sense approach to conducting counterterrorism. This argument is usually predicated on the premise that Arab males who are practitioners of Islam are more likely to be terrorists. The literature on identity, as it pertains to integration and assimilation, and the grand strategy of Islamic terrorist organizations, suggest that both arguments are

insufficient. In order to understand the counterproductive nature of a technique such as ethnic profiling pertaining to its use in CT-operations, it is necessary to understand the role that assimilation and integration play in an individual's decision to become a terrorist. Moreover, one must understand the objectives of Islamic terrorist organizations. A clear understanding of both highlights two hypotheses: First, that ethnic profiling of Muslims exacerbates the conditions that support incipient radicalization and the propensity to use violence within the Muslim community; and second, the technique plays into the strategy of Islamic terrorist organizations and gives such organizations what they are looking for: a divided and isolated United States.

**1. Ethnic, Cultural, and Religious Identity and the Role of Assimilation and Integration in Radicalization within the Muslim Diaspora in the United States**

There appears to be an existential battle taking place on the social landscape in the United States, which is manifested in a clash of ethnic, cultural and religious identities. In a 2006 Gallup Poll, when Americans were asked about what they admire about the Muslim world, the most common answer (32 %) was, "nothing."<sup>118</sup> Distrust of Muslims is higher now than after 9/11.<sup>119</sup> The apparent clash of identities is rooted in suspicion, distrust and fear. The clash in identities appears most prevalent in host societies where the ethnic, cultural and religious traditions are in sharp contrast to the ethnic, cultural and religious identities shared by members of a diaspora. This pertains specifically to the Muslim community living in the United States, many of whom are immigrants, and has become more apparent since the terrorist attacks on 9/11.<sup>120</sup> Issues of identity among

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<sup>118</sup> John L. Esposito and Dalia Mogahed, *Who Speaks for Islam? What a Billion Muslims really Think* (New York, N.Y: Gallup Press, 2007), 155.

<sup>119</sup> Gary Langer, "Most Back Outreach to Muslim Nations, But Suspicion & Unfamiliarity Persist," *ABC News/Washington Post Poll*, available at <http://abcnews.go.com/images/PollingUnit/1088a5ViewsofIslam.pdf> (accessed October 14, 2009).

<sup>120</sup> The 2008 Pew religious demographics report states that two-thirds of the 18.2 million Muslims in the United States are immigrants. See Pew Research Center. *The Pew Forum on Religion and Public Life, U.S. Religious Landscape Survey* (Washington, D.C., February 2008), 8.

members of the Muslim diaspora, blended with our understanding of radicalization and terrorism, provide useful insights into understanding the counterproductive nature of profiling.

Much like the difficulty in defining terrorism, there is no single definition of diaspora that reaches consensus across migration literature.<sup>121</sup> Some 21st century scholars insist that in order to be called a diaspora, there must be a geographically concentrated population of immigrants of the same ethno-nationality within a receiving country who have not given up the ties to their homeland. This definition is not necessarily incorrect, as it does briefly touch on a characteristic of diasporas, but it does not satisfy the global applicability of diasporas nor does it recognize the deep religious and historical roots associated with the term. Instead, this section will follow a broader definition of diaspora:

A people dispersed by whatever cause to more than one location. The people dispersed to different lands may harbor thoughts of return, may not fully assimilate into their host countries, and may maintain relationships with other communities in the diaspora.<sup>122</sup>

This thesis also follows Robin Cohen's six characteristic features of diaspora:

- (1) They, or their ancestors, have been dispersed from an original 'centre' to two or more foreign regions. Dispersal from an original centre is often accompanied by the memory of a single traumatic event that provides the folk memory of the great historic injustice that binds the group together;
- (2) they retain a collective memory, vision or myth about their original homeland including its location, history and achievements;

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<sup>121</sup> Use of the term today has in fact taken on an accumulation of historical meanings, references, and interpretations. The term itself originates from the Greek meaning *to scatter* or *disperse* and is found in the Greek interpretation of the Bible, specifically, in the Judeo-Christian text of Deuteronomy and Kings regarding exile and dispersal to foreign lands. Other theological interpretations refer to diaspora as a name given to the countries outside of Palestine where Jews were dispersed following their deportation from Palestine in from 721-587 B.C. See Robin Cohen, *Global Diasporas: An Introduction*. Global Diasporas. 2<sup>nd</sup> ed. (London; New York: Routledge, 2008), 21.

<sup>122</sup> Carol R. Ember, Melvin Ember, and Ian A. Skoggard, eds. *Encyclopedia of Diasporas: Immigrant and Refugee Cultures Around the World* (New York: Springer Science and Business Media, INC, 2005), xxvi.

- (3) they believe they are not—and perhaps can never be—fully accepted in their host societies and so remain partly separate;
- (4) their ancestral home is idealized and it is thought that, when conditions are favorable, either they, or their descendants should return;
- (5) they believe all members of the diaspora should be committed to the maintenance or restoration of the original homeland and to its safety and prosperity, and in some cases, even the very creation of an ‘imagined’ homeland;
- (6) they continue in various ways to relate to that homeland and their ethno-communal consciousness and solidarity are in an important way defined by the existence of such a relationship.<sup>123</sup>

Each of these features reveals important contextual insights that can help explain the occurrence of radicalization and terrorism within the Muslim diaspora in the United States. The “concept of diaspora can be applied when members of an expatriate minority community share several of the features.”<sup>124</sup> Note that neither the definition nor the listed features of diaspora require that members be geographically concentrated in the receiving country.

Assimilation and integration represents a key ingredient to the occurrence of radicalization and terrorism in the Muslim diaspora. For the purpose of this examination, assimilation is defined as “the process of absorbing or taking on the cultural values, attitudes, and behaviors of another cultural group.”<sup>125</sup> Assimilation, however, does not require absorption of *all* cultural behaviors. It is clear that it is possible to retain some of the original cultural values while adapting the accepted norms, behaviors, and traditions of another cultural group. Similarly, it is not enough to suggest that integration is just the root opposite of segregation. Although it is not specifically defined, migration literature

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<sup>123</sup> Robin Cohen, *Global Diasporas: An Introduction*, 4–6.

<sup>124</sup> William Safran, “Diasporas in modern societies: myths of homeland and return,” *Diaspora*, (1991), quoted in Cohen, 6.

<sup>125</sup> Carol R. Ember, Melvin Ember, and Ian A. Skoggard, eds. *Encyclopedia of Diasporas: Immigrant and Refugee Cultures Around the World* (New York: Springer Science and Business Media, INC, 2005), xxv.

suggests that integration is a result of institutional and informal policies that provide a particular minority race, religion, culture, or ethnicity avenues of social and political participation within a receiving society, thereby decreasing the propensity for separate concentrations of communities to be cut off from state welfare, education, and social services.<sup>126</sup>

A condition that terrorism scholars tend to agree on revolves around the individual's social and political detachment during his adolescence and the subsequent development of interpersonal networks among the more politically active.<sup>127</sup> Though Peter Waldman places much of his focus on constructing ideal-types of terrorist organizations, his assertions on social and political detachment are noteworthy. The internal void left by the social and political detachment from an individual's origins might be filled by a new collective group identity. A brief look at the Irish Republican Army (IRA) and Spain's Basque *Euskadi ta-Askatun* (ETA) will illustrate the importance of political and social detachment.

Both the IRA and ETA show strong signs of the process by which an individual experiences social and political detachment from his origins and a subsequent attachment to a more politically active social network. Members of the IRA and ETA experience this detachment by feeling compelled to fight for the liberation of the ethnic population they are associated with and believe it to be suffering from repression. Following the individual's detachment and subsequent re-attachment to a more politically active social network, the bonds of friendship go hand-in-hand with increased political cohesion. Among members of the IRA, friendship ties and political ties were intertwined and

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<sup>126</sup> Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World*, 3<sup>rd</sup> Ed., (New York and London: The Guilford Press, 2003).

<sup>127</sup> Donatella della Porta, "Introduction: On Individual Motivations in Underground Political Organizations", in Donatella della Porta (ed.), *Social Movements and Violence: Participation in Underground Organizations*, 8.

evolved together.<sup>128</sup> The same could be said for members of ETA, whom undoubtedly enjoyed strong friendship ties that were closely associated to the cultural and social clubs from which ETA primarily recruited.<sup>129</sup>

Cohen's first and third characteristics of diasporas are important conditions to the process social and political detachment.<sup>130</sup> The trauma accompanied by the *dispersal from an original centre* coupled with the *memory of a great historic injustice* detaches individuals from the society in the host country. Since members of a diaspora within a receiving country *believe they are not fully accepted in their host societies*, that feeling of detachment is exacerbated, leaving a void susceptible to exploitation and a propensity for a subsequent reattachment to more politically active and radical social networks elsewhere in the diaspora.

The experience of detachment from the host society, felt by members of an expatriate minority, is often worsened by the failure to include them in the political decision-making process. In Europe, lack of integration and assimilation of Muslims is linked to the perceived failure of thirty years of social policies being designed without their input or participation in the policymaking process.<sup>131</sup> From the individual perspective, lack of opportunity for political participation, coupled with a reattachment to a more politically-active radical social network—possibly, one that is already gravitating towards a clandestine existence—simply opens the aperture for that individual to resort to political violence.

The experience of social and political detachment from the receiving society and the subsequent re-attachment to more politically active social networks pre-stages the

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<sup>128</sup> Donatella della Porta, "Introduction: On Individual Motivations in Underground Political Organizations," in Donatella della Porta (ed.), *Social Movements and Violence: Participation in Underground Organizations*, 8.

<sup>129</sup> Peter Waldmann, "Ethnic and Sociorevolutionary Terrorism: A Comparison of Structures," in della Porta, *Social Movements and Violence*, 241.

<sup>130</sup> Recall: Robin Cohen's first feature deals with the idea that Dispersal from an original centre is often accompanied by the memory of a single traumatic event that provides the folk memory of the great historic injustice that binds the group together; the third feature deals with the idea that believe they are not—and perhaps can never be—fully accepted in their host societies and so remain partly separate.

<sup>131</sup> Amel Boubekeur, "Time to Deradicalise? The European Roots of Muslim Radicalisation," *The International Spectator* 43, No. 3 (July-September 2008): 85–99, 88.

necessary condition to engage in political activism and participate in political conflicts. While members of a particular diaspora living in one place might be subject to a different political context than members of the same diaspora living in an entirely different part of the world, the condition that creates the propensity for radicalization is practically uniform. With a reattachment to a more politically-active social network, the bonds of friendship formed among members of the social network begin to go hand-in-hand with increased political cohesion (Figure 7).

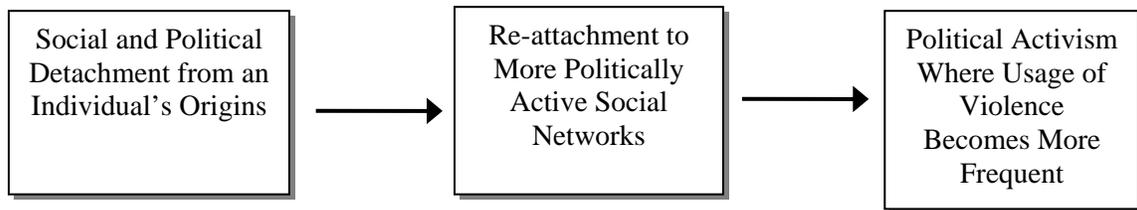


Figure 7. Radicalization Process Summary

In sum, most terrorism scholars tend to agree that the making of a terrorist is a process.<sup>132</sup> John Horgan states, “a person does not become a terrorist overnight ... there is undeniably a gradual learning process that appears to typify involvement in terrorism.”<sup>133</sup> In the context of diasporas, the formation of friendship bonds within a politically-active radical social network in conjunction with an increased sense of political cohesion provides outlets from Cohen’s first and third features of diasporas. The individual’s new affiliations provide a coping mechanism to help deal with the *memory of a great historic injustice and lack of acceptance by the receiving society*. Moreover, there is a degree of empowerment that the individual feels that gives him the sense that he can defend himself from the injustice and return everything to the way it once was, or perhaps ought to be, in the near future.

Ethnic, cultural and religious identity also represents a key ingredient to the occurrence of radicalization and terrorism in diaspora. Similar to the experience of political and social detachment from the host society, the experience of losing one’s

<sup>132</sup> For example: Horgan, Crenshaw, and Silke all agree that becoming a terrorist is a gradual process.

<sup>133</sup> John Horgan in Andrew Silke, *Terrorists, Victims, and Society: Psychological Perspectives on Terrorism and its Consequences* (Wiley Series in Psychology of Crime, Policing, and Law. Chichester, West Sussex, England; Hoboken, NJ: Wiley, 2003), 113.

identity shapes both perceptions and attitudes among members of diaspora. As previously discussed, the experience of social and political detachment reflects the first and third features of Cohen's characterization of diasporas. Ethnic, cultural, and religious identity is a close reflection of the second, fourth, fifth and sixth characteristics. This portion of the analysis will examine the extent that ethnic, cultural and religious identity plays a role in providing a condition conducive to radicalization and terrorism in diaspora.

In the second feature, Cohen suggests that diasporas *retain a collective memory, vision or myth about their original homeland*. This infers that members of a diaspora retain strong memories of that which makes them identify with a particular place. Examples include shared opinions and beliefs, tastes, ethnicities and religions, cuisine, the consumption of medicines, lifestyles, fashions, music, and dance.<sup>134</sup> In refugee literature, it is clear that some refugees do recreate their home communities that they left behind.<sup>135</sup> The elements of their ethnic, cultural, and religious identity follow members of diaspora to the place of re-settlement. This helps maintain a sense of cultural continuity.

Cohen's sixth feature of diaspora states that members of a diaspora continue in various ways to relate to that homeland, and their ethno-communal consciousness and solidarity are defined by the existence of such a relationship. From this, the elements of identity often clash with the elements that define the ethnic, cultural, and religious identity in the receiving countries. This infers that identity must not be treated as a separate condition that is mutually exclusive of integration. In fact, the two concepts play off each other and are closely related to the phenomenon of radicalization and terrorism in diaspora.

The clash in identities appears most prevalent in host societies where the ethnic, cultural and religious traditions are in sharp contrast to the ethnic, cultural and religious identities shared by members of the diaspora. For example, as briefly mentioned in the

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<sup>134</sup> Cohen. *Global Diasporas: An Introduction*. 174.

<sup>135</sup> Marwa Shoeb, Harvey M. Weinstein, and Jodi Halpern, "Living in Religious Time and Space: Iraqi Refugees in Dearborn, Michigan." *Journal of Refugee Studies* 20, no.3 (2007).

introduction, a particular notion of anxiety is felt in the Muslim world in the manner it frames the West, just as a notion of anxiety is felt by the West in the manner it frames Muslims, Islamism, and extremism. This anxiety translates into a feeling of being threatened by the other, and transcends into the idea that there exists some kind of existential struggle between the West and the Muslim world. These perspectives highlight that, as members of diaspora struggle to retain their *ethno-communal consciousness and solidarity*, they are often met with resistance by the receiving society and that resistance might exacerbate the extent to which a member of a diaspora may feel he must defend himself or the community he believes to represent.

As Horgan suggests, and many of the terrorism scholars agree, radicalization is a gradual process. Once radicalization takes hold within an individual, identity plays an important role in the propensity for an individual to turn to terrorism. Within the new politically active and radical social network, there is the perception that their identity is threatened by the host society and, as a result, members of diaspora that are affiliated with these politically-active social networks might feel as if they must defend their identity and take action to re-establish what they believe was unjustly taken from them.

Cohen's fourth and fifth features of diaspora also help qualify this claim. The fourth characteristic of diaspora states that *the ancestral home is idealized and it is thought that, when conditions are favorable, either they, or their descendants should return*; the fifth states *that they believe all members of the diaspora should be committed to the maintenance or restoration of the original homeland and to its safety and prosperity, and in some cases, even the very creation of an imagined homeland*. An individual who has become radicalized views his ethnic, cultural, and religious identity as an extension of his homeland, which are all perceived to be under attack. Thus, the individual is susceptible to the use of political violence as a means to ensure the restoration, safety, and security of his homeland.

Finally, it is not clear as to the extent that the conditions presented in both hypotheses related. However, it does appear as if they are not entirely separate and do in fact intersect. Thus, integration and assimilation must not be viewed as conditions that are mutually exclusive of the role of identity in radicalization and terrorism as they are in

part related to each other. The connection is inherent to Cohen's sixth feature of diaspora where the success of assimilation and integration partially hinges on the extent of the clash in identities between the members of the diaspora and their receiving society.

In sum, there are two key ingredients to the occurrence of radicalization and terrorism in diaspora. First, assimilation and integration represent a necessary condition to the occurrence of radicalization and terrorism in diaspora because of the experience of political and social detachment from the host society felt by members of an expatriate minority. This condition has a direct impact on the process of an individual's radicalization. Second, ethnic, cultural and religious identity also represent a condition to the occurrence of radicalization and terrorism in diaspora. An individual who has become radicalized views his ethnic, cultural, and religious identity as an extension of his homeland, which are all perceived to be under attack. As a result, members of diaspora that are affiliated with politically-active social networks might feel as if they must defend their identity and take action to re-establish what they believe was unjustly taken from them.

*a. Case Study: Radicalization of Somali Muslims in Minneapolis, Minnesota*

Each of the two conditions, or key ingredients, to radicalization and terrorism in diaspora argued in this analysis contain enough support from the literature pertaining to the broader topics of terrorism and migration. As a quality control, it is important to attempt to identify the presence of these conditions in actual diaspora communities where members have radicalized and turned to terrorism. This will help illustrate the implications of the two conditions. Therefore, the final portion of this analysis will test these conclusions against a case study of members of Somali diaspora living in Minneapolis, Minnesota.

Minneapolis, Minnesota, is home to one of the largest concentrations of Somali immigrants and refugees living in the United States. According to various federal immigration resources, Somali refugees began arriving in the United States in the early 1990s. During that time, Somalia struggled in violent mayhem as a result of the collapse

of the Siad Barre regime in 1991.<sup>136</sup> “The collapse resulted in a descent into factional fighting and anarchy, especially in Southern Somalia.”<sup>137</sup> The total number of Somalis who live in Minneapolis, including the proportion of Somalis who are foreign born and non-citizens, foreign born naturalized citizens, or native born, is unclear today.<sup>138</sup> However, the most credible reports available suggest that there are anywhere between 70,000 and 200,000 Somalis living in Minneapolis.<sup>139</sup>

There is no agreement on exactly when or how they emerged, but it was sometime during this period that Al-Shabaab Al-Mujahidin, or *The Youth*, formed as a major militant force fighting for control in Somalia.<sup>140</sup> Al-Shabaab became a powerful and important armed element of the Islamic Courts Union (a governing Islamic council of Sharia law) that gained control of South/Central Somalia and was the major source feeding the insurgency against the Ethiopian forces that invaded Somalia in December 2006.<sup>141</sup> Like Al-Qaeda, Al-Shabaab wages jihad against the enemies of Islam and seeks to adapt its own Salafi-Wahhabi governance.<sup>142</sup> Unlike Al-Qaeda, Al-Shabaab appears to be much more regionally focused vice Al-Qaeda’s global aims.<sup>143</sup> However, the USG

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<sup>136</sup> United States. Congress. Senate. Committee on Homeland Security and Governmental Affairs. *Violent Islamic Extremism: Al-Shabaab Recruitment in America, testimony of Andrew Liepman, Deputy Director of Intelligence, National Counterterrorism Center (NCTC), Directorate of Intelligence, March 9, 2009*, 2. PDF Version <https://www.hsdl.org/homesec/docs/testimony/nps36-031309-04.pdf&code=41c0603cf77cbcba53890debd5c083c7> (accessed May 20, 2009).

<sup>137</sup> United States. Congress. Senate. Committee on Homeland Security and Governmental Affairs. *Violent Islamic Extremism: Al-Shabaab Recruitment in America, testimony of Andrew Liepman, Deputy Director of Intelligence, National Counterterrorism Center (NCTC), Directorate of Intelligence.*

<sup>138</sup> 2000 U.S. Census Bureau Data is insufficient to make a generalization on the number of Somalis in Minneapolis.

<sup>139</sup> *Violent Islamist Extremism: Al-Shabaab Recruitment in America*, Hearing before the Committee on Homeland Security, US Senate, March 11, 2009.

<sup>140</sup> Ibid.

<sup>141</sup> Paula Cristina Roque, “Somalia: Understanding Al-Shabaab.” Institute of Security Studies. Situation Report, June 3, 2009. PDF available at [www.hsdl.org](http://www.hsdl.org) (accessed June 10, 2009).

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

believes Al-Shabaab has close ties to Al-Qaeda and designated Al-Shabaab, which apparently has at least fifteen other surnames, a terrorist organization in February 2008.<sup>144</sup>

Between the years of 1996 and 2008, in a series of separate instances, an alleged sixteen young men of Somali descent suddenly disappeared from their local communities in Minneapolis. These communities are primarily composed of members of the large Somali diaspora that eventually settled in Minneapolis. One of these young men, Shirwa Ahmed, a college student in his late twenties, blew himself up in Somalia in one of five simultaneous bombings.<sup>145</sup> “The coordinated attacks were executed against local government, Ethiopian, and UN compounds in the northern Somali polities of Puntland and Somaliland.”<sup>146</sup> This became the central focus for federal law enforcement officials investigating the possibility of Al-Shabaab or similar organizations recruiting in the United States.

Some members of the Somali diaspora living in Minneapolis testified to their experiences with the conflict in Somalia. In March 2009, the community director at the Brian Coyle Center of Pillsbury United Communities, a central community center for the Somali community living in the Minneapolis metropolitan area, testified on the concern for radicalization among Somali youth in the Minneapolis area. Like so many Somalis who reside in Minneapolis, Abdirahman Mukhtar was a refugee from war-torn Somalia. He said the following:

My name is Abdirahman Mukhtar. I was born in Somalia. I fled Muqdisho, the capital city of Somalia, when the civil war started early January 1991 and went to a refugee camp in Liboa, Kenya. I stayed seven years in refugee camps and the capital city of Nairobi, Kenya. I moved to the United States in August of 1998. The main difficulty I had

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<sup>144</sup> "US Department of State: Designation of Al-Shabaab." *M2 Presswire* (Mar 19, 2008), <http://proquest.umi.com.libproxy.nps.edu> (accessed May 30, 2009).

<sup>145</sup> Spencer S. Hsu and Carrie Johnson - Washington Post. "Somali Americans Recruited by Extremists; U.S. Cites Case of Minnesotan Killed in Suicide Blast in Africa." *The Washington Post*, March 11, 2009, <http://proquest.umi.com.libproxy.nps.edu> (accessed May 20, 2009).

<sup>146</sup> *Violent Islamist Extremism: Al-Shabaab Recruitment in America*, Hearing before the Committee on Homeland Security, US Senate, March 11, 2009.

assimilating to the mainstream community was the language barrier...I experienced racial and cultural misunderstandings [and had] limited formal education.<sup>147</sup>

Mukhtar's testimony underplays the severity of the humanitarian crisis in Somalia. The most recent reports from UNRWA claim that there are more than 530,000 Somali refugees scattered across the globe.<sup>148</sup> Hundreds of thousands more are IDPs in Somalia fleeing the conflict and perhaps hundreds of thousands more in a state of humanitarian crisis that the UN may not even recognize under its current definitions and policies. Moreover, aid cannot get where it needs to go. "In 2008, one third of all humanitarian casualties worldwide occurred in Somalia, making it the most dangerous place on Earth for aid workers."<sup>149</sup> These facts are an important background narrative to Mukhtar's opening remarks.

Though Abdirahman Mukhtar underplays the seriousness of the political violence that is impacting the Somali diaspora, his statement highlights the implications surrounding the first key ingredient to radicalization and terrorism in diaspora: assimilation and integration. Because the situation in Somalia is a protracted crisis, many of the individuals fleeing the region have very little education and have almost no English-speaking skills. According to testimony by the Deputy Director of the NCTC, "their relative linguistic isolation and the sudden adjustment to American society many refugees faced has reinforced, in some areas, their greater insularity compared to other, more integrated Muslim immigrant communities, and has aggravated the challenges of assimilation for their children."<sup>150</sup>

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<sup>147</sup> Abdirahman Mukhtar, "Testimony by Abdirahman Mukhtar, Youth Program Manager, Brian Coyle Center of Pillsbury United Communities, before the U.S. Senate Homeland Security and Governmental Affairs Committee, March 11, 2009 (Brian Coyle Center of Pillsbury United Communities, 2009), <https://www.hsdl.org/homesec/docs/testimony/nps36-031309-07.pdf&code=9bc9175c3cc5844716880651d68297b6> (accessed May 30, 2009).

<sup>148</sup> UNHCR. "2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons". PDF available at <http://www.reliefweb.int> (accessed June 16, 2009).

<sup>149</sup> *Violent Islamist Extremism: Al-Shabaab Recruitment in America*, Hearing before the Committee on Homeland Security, US Senate, March 11, 2009.

<sup>150</sup> Ibid.

Ethnic, cultural and religious identity, which represents another key ingredient to radicalization and terrorism in diaspora, is also a factor in the detachment process. Every key witness cited a sense among the youth of being caught between two worlds, a phrase often attributed to a deep conflict in identity. The director went on to state that the Somali youth in Minneapolis often feel “torn between their parents’ traditional ethnic, tribal, and clan identities and the new cultures and traditions offered by American society.”<sup>151</sup> Without institutions to balance and properly guide these young men in such a way as to overcome this obstacle, like any other internal conflict among youth, it simply manifests itself in ways that can pose dangerous consequences in later years.

The director’s remarks, and the conclusions that can be inferred from those remarks, are also supported in Mukhtar’s testimony. He claims that the language barrier worsens the racial, cultural, and religious misunderstandings between native residents and Somalis.<sup>152</sup> The assimilation and integration problem also extends to the classroom. “Somali students like me were enrolled into classrooms in the United States based on age rather than academic level, making it very difficult to succeed. When classes are challenging beyond a person’s current capability, it often leads to students skipping school and dropping out.”<sup>153</sup> Moreover, gangs and drugs are tempting outlets for the Somali youth, who lack role models, structure, and direction. Economic and social mobility is on the far distant horizon as “Somali families for the most part live in high density housing in the lowest income neighborhoods in the City.”<sup>154</sup> Poor social integration, little to no feelings of acceptance into the receiving society, and almost a complete absence of assimilation among younger members of the Somali diaspora in Minneapolis opens the divergence between these young Somalis and their host society.

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<sup>151</sup> *Violent Islamist Extremism: Al-Shabaab Recruitment in America*, Hearing before the Committee on Homeland Security, US Senate, 11 March 2009.

<sup>152</sup> Abdirahman Mukhtar, testimony before the U.S. Senate Homeland Security Committee, March 11, 2009.

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.*

*b. Hypothesis One Summary*

The analysis, thus far, confirms my first hypothesis of the counterproductive nature of profiling in CT-operations. First, there is a close relationship of assimilation and integration to the likelihood of social and political detachment from a receiving society. Second, ethnic, cultural and religious identity conflicts deepen the sense of detachment and leave an individual, especially one who is young and lacks guidance, direction, structure, and role models, susceptible to the misgivings of radical Islamic recruiters who are seeking personnel to participate in their cause. Expert witnesses on the incidents of radicalization among young Somali men clearly illustrate the experience of social and political detachment from the receiving society and the subsequent re-attachment to more politically active social networks. As Director Liepman of the NCTC argues:

Sophisticated extremist recruiters target vulnerable individuals who lack structure and definition in their lives, by offering what parents and outsiders often view as a seemingly innocuous alternative to more common violent subcultures associated with gangs and criminality.<sup>155</sup>

Accordingly, I argue that the social and political detachment that these young men might be experiencing pre-stages the necessary condition to engage in political activism and participate in political conflicts.

Profiling of Muslims—either real or perceived, therefore, increases the extent to which members of the Muslim diaspora feel marginalized or in a state of isolation from their receiving society vis-à-vis the United States. The unintended consequence of a technique such as profiling denigrates Muslims to the point as being perceived by the receiving society as socially unacceptable, disloyal and untrustworthy constituents. The same may be said for the political isolation of the Muslim diaspora. Coupled with the broad perception that Muslims are subversively acting to undermine the U.S. and its interests, including plots to overthrow the U.S. government, the political marginalization is severe. The consequences of political marginalization multiply the

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<sup>155</sup> *Violent Islamist Extremism: Al-Shabaab Recruitment in America*, Hearing before the Committee on Homeland Security, US Senate, 11 March 2009.

amplitude of the socially-isolating forces already at play. The end-state of both the social and political detachment from U.S. society is an entire community that fails to assimilate and, therefore, leaves the aperture for the continued recruitment efforts of Islamic extremist networks wide-open.

## 2. The Grand Strategy of Islamic Terrorist Organizations

Many argue that profiling of Muslims is a practical response to the threat of Islamic terrorism. In 2003, Heather Mac Donald stated in her widely acclaimed book, *Are Cops Racist?* “if we concentrate our investigation on Middle-Eastern Muslims, we are not playing the odds: we are following the terrorists’ own self-definition.”<sup>156</sup> Mac Donald was not arguing that police should begin a focused campaign against the Muslim population, but suggesting that systems such as the Computer Assisted Passenger Profiling System (CAPPS) start using ethnicity and national origin as predictors of Islamic terrorism, rather than simply using indicators such as paying cash for tickets and buying one-way tickets, indicators that Islamic terrorists can easily bypass.<sup>157</sup> The objectives and strategy of Islamic terrorism, however, suggest that the technique is actually counterproductive.

The logic behind my second hypothesis for the counterproductive nature of profiling follows from an understanding of the grand strategy of Islamic terrorist groups. Part of the grand strategy of Islamic terrorists is to isolate the United States, and its allies, from the rest of the World. One objective in such a strategy is to portray the United States as a hotbed of racism and injustice. My second hypothesis is:

*A policy that advocates the arbitrary use of ethnic and religious profiling—whether real or perceived—alienates individuals of Muslim identity, which plays directly into the strategy of Islamic terrorist organizations by portraying the United States as fundamentally racist and willing to arbitrarily forego its own democratic principles.*

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<sup>156</sup> Heather Mac Donald, *Are Cops Racist?* (Chicago: Ivan R Dee Publishers, 2003), 165.

<sup>157</sup> *Ibid.*, 165–67. Mac Donald notes that as it turns out, CAPPS did flag two of the 9/11 hijackers because of their travel itineraries and payment method, but because the 1996 Gore Commission, which instituted CAPPS, concluded that all groups commit crime at equal rates (as suggested also by the I-95 case study), factors such as national origin, religion, ethnicity, and gender were excluded from the CAPPS’ profiling protocols, see p.165.

Even the perception of ethnic profiling leaves a lasting impression that the United States is willing to arbitrarily forego its own democratic values. The consequence is that Muslims and non-Muslims will grow farther apart in beliefs, values, and the manner in which they view and trust each other. Moreover, should support for the United States weaken, the isolation strategy could potentially appear successful.

Islamic extremist groups cleverly and patiently focus their efforts on undermining the global legitimacy of the United States. They understand and use the media to alter cultures of personality, they use elaborate surprise and deception tactics, sophisticated recruiting methods, and intricately blend religion, politics and law in an extremely volatile social discourse. Their hierarchical structures are unfixed, moving from centralized organizational configurations to disenfranchised, “leaderless jihad” networks.<sup>158</sup> Efforts of Islamic extremists are designed to target three very specific centers of gravity: international alliances, domestic and international public opinion, and the fragile balance of ethnic relations—primarily in the United States, but also in Europe and Great Britain. Striking the right chords in each of these centers of gravity not only isolates the United States, but upsets a very fragile balance of domestic and international ethnic relations.

***a. International Alliances and Domestic and International Public Opinion***

There are several examples of Islamic terrorist organizations, such as Al-Qaeda, planning their targets as a means of cutting off the United States’ support in the GWOT from its allies and targeting public opinion against the wars in Iraq and Afghanistan. A few examples will suffice to make the point apparent. One example is the suicide bombings that took place on several trains in Madrid, Spain. On March 11, 2004, four commuter trains arriving in central Madrid exploded in a near-simultaneous attack, which killed 191 people.<sup>159</sup> The attacks are reported to be inspired by Al-Qaeda,

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<sup>158</sup> Marc Sageman, *Leaderless Jihad: Terror Networks in the Twenty-First Century* (Philadelphia, Pennsylvania: University of Pennsylvania Press, 2008).

<sup>159</sup> U.S. Department of State, Office of Coordination for Counterterrorism, *Country Reports on Terrorism 2005* (Washington D.C., April 2005), on the MIPT Web site available at <http://terrorisminfo.mipt.org> (accessed October 15, 2009).

but without direction from the group.<sup>160</sup> Less than one month later, as police prepared to conduct a raid in response to the attacks, seven suspects of the attack blew themselves up in an apartment, which also took the life of one police officer.<sup>161</sup> Many argue that the attacks were just enough to sway public opinion in opposition to the U.S.-led campaign and bolster support for the election of Prime Minister Zapatero, who quickly withdrew Spanish troops from Iraq in a move widely applauded by Spanish citizens.<sup>162</sup>

Another example is the four suicide bombings, perpetrated by British citizens—all Muslims—on the London transit system on July 7, 2005 (7/7). Three of the bombings occurred in the underground subway, and one on a bus. The attack killed 56 people and injured nearly 700.<sup>163</sup> The alleged leader of the small group that murdered 52 people on 7/7, Mohammed Siddique Khan, planned the killings out of anger over the UK's foreign policy, specifically, attributing the attacks to the UK's involvement in the U.S.-led invasion and occupation of Iraq.<sup>164</sup> Both attacks appear to have been aimed at demonstrating to both the political representation and the constituencies that support for the military campaigns in Iraq and Afghanistan is unjustified and will jeopardize the safety of innocent civilians. The UK remains a key ally in the U.S.'s efforts to prevent terrorism. Spain, however, was heavily criticized by the U.S. for being perceived as giving in to the Islamic terrorist strategy by withdrawing its troops from Iraq soon after the train bombings.<sup>165</sup> Even with the criticism, the attacks appeared to have an enormous effect on public opinion in Spain, which might have completely altered the course of their elections.

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<sup>160</sup> U.S. Department of State, Office of Coordination for Counterterrorism, *Country Reports on Terrorism 2005*, 4.

<sup>161</sup> *Ibid.*, 52.

<sup>162</sup> Carltta Vitzthum, "U.S. Ties are Election Issue in Spain," *Wall Street Journal*, June 11, 2004.

<sup>163</sup> U.S. Department of State, Office of Coordination for Counterterrorism, *Country Reports on Terrorism 2005* (Washington D.C., April 2006), 84, on the MIPT Web site available at <http://terrorisminfo.mipt.org> (accessed October 15, 2009).

<sup>164</sup> Alan Cowell, "One Year Later, Video Shows Warning by a London Bomber," *New York Times*, July 7, 2006.

<sup>165</sup> Caleb Carr, "The Smell of Fear," *Wall Street Journal*, July 19, 2005.

**b. Ethnic Relations**

In addition to targeting international alliances and public opinion, Islamic terrorists also target the fragile balance of ethnic relations. Islamic terrorists understand the influence that ethnic relations can have on an entire nation's social and political discourse. Islamic terrorists can capitalize on the resulting social and political disharmony by using it to advance and qualify its own recruiting propaganda. Moreover, Islamic terrorist groups such as Al-Qaeda capitalize on the social and political disharmony by "exploiting ordinary people's grievances and manipulating them into becoming terrorists."<sup>166</sup> Essentially, Al-Qaeda's manipulation of ethnic tensions is potentially used to obtain leadership and control "over all other extremist movements in order to unify it into one single movement."<sup>167</sup> Al-Qaeda's attack on a sacred Shiite shrine in Iraq exemplifies the assertion that Islamic terrorist groups selectively choose targets to upset delicate ethnic relations and use that discord to their advantage.

On February 22, 2006, the Askariya mosque in Samarra, Iraq was bombed by Al-Qaeda in Iraq. Almost immediately, Shiites took to the streets of Baghdad, about 60 miles south of Samarra. Shiite protestors launched attacks against dozens of Sunni mosques, killing several Sunni Imams.<sup>168</sup> Sectarian violence erupted as a result of the bombing of the Golden Dome, and blame often pointed to the U.S. occupation, giving fuel to anti-U.S. sentiment in Iraq. By the end of 2006, 350 mosques had been targeted in sectarian conflict in Iraq, three times that of 2005.<sup>169</sup> Not only was Al-Qaeda in Iraq aiming to start a civil war in Iraq, but they used the attack to unify opposition against the United States and advance its message in order to spread the reach of their organization.

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<sup>166</sup> U.S. Department of State, Office of Coordination for Counterterrorism, *Country Reports on Terrorism 2006* (Washington D.C., April 2007), 13, on the MIPT Web site available at <http://terrorisminfo.mipt.org> (accessed October 15, 2009).

<sup>167</sup> Ibid.

<sup>168</sup> Robert F. Worth, "Blast Destroys Shrine in Iraq, Setting Off Sectarian Fury," *New York Times*, February 22, 2006, available at <http://www.nytimes.com/2006/02/22/international/middleeast/22cnd-iraq.html> (accessed October 19, 2009).

<sup>169</sup> U.S. Department of State, Office of Coordination for Counterterrorism, *Country Reports on Terrorism 2006* (Washington D.C., April 2007), 329.

### **3. Connecting the Dots**

Arguments about the legality and even morality of profiling appear to be off the mark when it comes to preventing terrorism. By looking at profiling in greater context of identity and the nature of Islamic terrorism, it is possible to illustrate that however compelling it may be as a tool, the effects can actually hinder our efforts to disrupt terrorism. My analysis is not attempting to liken profiling to terrorist attacks. Instead, I am attempting to show that Islamic terrorist organizations such as Al-Qaeda are clever opportunists, working to divide and isolate the United States in any way possible. An analysis of my two hypotheses regarding the counterproductive nature of profiling Muslims demonstrates the true essence of the “Catch-22” effect as it pertains to the use of profiling in CT-operations.

My two hypotheses are not exclusive of each other. In many ways, the second operates from the first: Alienation of ethnic and religious identity not only exacerbates the conditions that lead to incipient radicalization, but portrays the United States as racist and unjust, which fundamentally isolates the U.S. from the Muslim world, essentially creating two worlds in violent opposition to each other, both on the domestic and international fronts. Ethnic or religious profiling merely exacerbates these conditions, which appears to play directly into the strategy of Islamic terrorist organizations. The next section will illustrate that each time Muslims were exposed for supporting terrorism, ethnic profiling does not appear to have been a factor in disrupting such plots.

#### **B. ROLE OF PROFILING IN DISRUPTING TERRORIST PLOTS**

What is not often discussed in the debate on whether profiling Muslims is justified or effective is that, even if a policy were implemented that arbitrarily targeted Muslims, profiling Muslims in the U.S. would not be an easy task. How does anyone distinguish Muslim from non-Muslim? The Pew Research Center noted in 2007 that Muslims are the most racially-diverse religious group in America, as one in three are white, one in four are black, one in five are Asian, and the remaining 19% (just less than

one in five) are of other races.<sup>170</sup> Of course, targeting mosques seems to be the method that seems more resourceful, and that also appears to be the source of many of the complaints by the Muslim community. On individual appearances, it seems simple to “spot” a Muslim when appearances follow the traditional stereotype, for example: Arab men dressed in traditional garments, displaying beards, speaking Arabic, praying together and making comments about the U.S. in Iraq. Even this rationale is flawed, as it suggests that all Muslims will fit into that profile. It appears, however, that such rationale does seem to play a role in deciding who “might be” a danger to society.

Perhaps the most often cited instance of profiling Muslims at airports comes from the case now known as “flying while Muslim,” also referred to as the Six Imams Case. Officially cited as *Shqeirat et al. v. U.S. Airways Group*, the case details an incident where in 2006, six passengers of a U.S. Airways flight were removed and detained by law enforcement officers on grounds of displaying unusual and strange behavior that was considered by the flight crew as detrimental to safety.<sup>171</sup> As the aircraft prepared for takeoff, a passenger passed a note to one of the flight attendants, the note stated:

6 suspicious Arabic men on plane, spaced out in their seats. All were together, saying “.....Allah.....Allah,” cursing U.S. involvement w/ Saddam before flight—1 in front exit row, another in first row 1st class, another in 8D, another in 22D, two in 25 E&F.<sup>172</sup>

Lawyers for the defendants argued that U.S. Airway’s decision to remove the six passengers was justified under the Federal Aviation Act.<sup>173</sup> The motion to dismiss the case was denied, with the opinion of the Court ultimately going in favor of the plaintiffs.<sup>174</sup> This case is used as the figurehead for what many refer to as Islamophobia,

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<sup>170</sup> Pew Research Center. The Pew Forum on Religion and Public Life, *U.S. Religious Landscape Survey* (Washington, D.C., February 2008), 44.

<sup>171</sup> Federal Aviation Act, 49 U.S.C. § 44902(b) states that an air carrier may refuse to transport a passenger or property that the carrier decides is, or might be, inimical to safety.

<sup>172</sup> Text of US Airway’s motion for Summary Judgment in *Shqeirat et al v. U.S. Airways Group, INC., et al*, on the CAIR Web site, available at <http://www.flyingwhilemuslim.org/images/pdf/011-05.29.07-memo-of-law-in-support-of-msj.pdf> (accessed October 20, 2009).

<sup>173</sup> Federal Aviation Act, 49 U.S.C. § 44902(b) states that an air carrier may refuse to transport a passenger or property that the carrier decides is, or might be, inimical to safety.

<sup>174</sup> Council on American-Islamic Relations, “CAIR Hails 'Major Victory' in Six Imams Civil Rights Case.” *Science Letter*, August 11, 2009, available at <http://www.proquest.com> (accessed October 28, 2009).

suggesting that it appears that this case is more of a case of fear and suspicion of Muslims than a systematic and methodical screening approach that tools such as CAPPs provide.

As it happens, CAPPs did undergo an overhaul. In 2003, the Transportation Security Administration (TSA) took massive steps to improve the original CAPPs protocols.<sup>175</sup> The TSA sought to enhance airport screening measures in a new screening system called CAPPs II, which is now more commonly referred to as Secure Flight. The new system has the capability of merging passenger records, which in CAPPs I was limited to name, flight reservation date, flight information and payment method, with data stored in databanks maintained by private companies.<sup>176</sup> Such data typically contains address, phone number, date of birth, and social security number.<sup>177</sup> The Secure Flight capability is designed to cross-reference passenger records with terrorist watchlists. The idea is that by using personally-identifiable information, such as an individual's date of birth, the new pre-screening system can reduce the passenger mismatches, i.e., a matching record to a record contained in the TSC's watchlist based on a name with the same spelling can now be discriminated with date of birth to minimize errors.<sup>178</sup> The date of birth indicator can discriminate between the passenger record being screened by Secure Flight and the record contained in the terrorist watchlist.

Framed from the perspective of passenger profiling, it appears that Secure Flight does not incorporate discriminating indicators such as ethnicity or religion. Moreover, it appears that the Secure Flight system actually reduces the likelihood of a situation where an innocent individual is detained by authorities because he or she had the same name of an individual on the TSC's terrorist watchlist. Even with the new changes, which were fully implemented in 2006, complaints by Muslims that they are being unfairly treated, or profiled, in airports persist.

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<sup>175</sup> TSA's new measures to improve CAPPs were a result of the Aviation and Transportation Security Act, Pub. L. No. 107-71, § 136, 115 Stat. 597, 636C37 (2001).

<sup>176</sup> GAO, *Aviation Security: Transportation Security Administration Did Not Fully Disclose Uses of Personal Information during Secure Flight Program Testing in Initial Privacy Notices, but Has Recently Taken Steps to More Fully Inform the Public* (Washington, D.C.: July 22, 2005), 3.

<sup>177</sup> *Ibid.*

<sup>178</sup> United States. Congress. House, *Improving Pre-Screening of Aviation Passengers Against Terrorist And Other Watch Lists*, Subcommittee on Economic Security, Infrastructure Protection and Cyber security of the Committee on Homeland Security, Serial No. 109-27, June 29, 2005, 15-16.

Airports are not the only venue in which Muslims feel they are being profiled. Subways, train stations, and major sporting events represent venues that often involve random searches, which are sometimes perceived by some Muslims as targeting people who look or appear Muslim. In each of these cases, the security policies in place seem to point towards other indicators to identify individuals who might be engaged in subversive activity. For example, an individual who is sweating profusely, repeatedly checking self, making irregular glances from side-to-side, and possibly carrying a large object better fits the profile of an individual who might be preparing to conduct an attack.<sup>179</sup> In sum, it appears that complaints of profiling continue, but it does not appear that there are any formal policies or systems that advocate the use of a technique of arbitrarily profiling Muslims under the assumption or stereotype that terrorists tend to be Muslim. In an in-depth review of several disrupted terrorist plots in the U.S. following 9/11, specifically in cases where the suspects are Muslims, it also does not appear that profiling was used by law enforcement and intelligence agencies to prevent the intended attacks.

### **1. Foiled Islamic Terrorist Plots Post-9/11**

In July 2009, the Heritage Foundation released a report that provides a brief description of 23 different terrorist plots against the U.S. since 9/11. The Heritage Foundation report is not an all-inclusive review; it is essentially a brief summary of the plot descriptions and the suspects involved. I examined 12 of the 23 plots by conducting an in-depth survey of the literature related to each of the plots. The goal of such an examination is to identify or determine the extent that profiling, in any form, played a role in the disruption of the plots. The major finding can be summarily described in one statement: there does not appear to be any evidence, at least none that is available in the public domain, that indicates that profiling, in any form, was used by law enforcement and intelligence officials to initiate investigations, nor does profiling appear to be used in any way to disrupt any of the plots. A detailed table of the plots, to include suspects, the

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<sup>179</sup> Memorial Institute for the Prevention of Terrorism (MIPT), “Terrorism Warnings: Suspicious Terrorist Activities,” on the MIPT Web site, available at <http://www.mipt.org/mipt-terrorism-warnings--indicators-card> (accessed August 23, 2009).

intended targets, the nature of the attacks or plan and the key factors initiating the investigation of the individuals in question is presented in Tables 2–5.<sup>180</sup>

Of all the post-9/11 plots that have been foiled, the Lackawanna Six investigations seem to invoke the most criticism for profiling.<sup>181</sup> According to FBI Agent Ed Needham of the FBI Buffalo Field Office, the investigation began as the six men were in Afghanistan, when an anonymous letter from Lackawanna's Yemeni community arrived at the Buffalo FBI field offices, stating that the men went to “meet bin Laden and stay in his camp.”<sup>182</sup> This indicates that, in the case of the Lackawanna Six, profiling did not play a role in the prompting the investigations into the activities of the suspects.<sup>183</sup>

It appears that of the 12 plots examined, law enforcement agencies initiated only two of the investigations based on tips to either local law enforcement or the FBI. The Virginia Jihad Network was brought down from a thorough investigation into the reach of the Saudi-Wahhabi and Salafi extremist recruiting that is taking place within the United States. The “Shoe-Bomber” was stopped in the act, and the details of the incident suggest that Richard Reid was not profiled, in any form; rather, he was prevented from doing harm by the intervention of attentive passengers and flight crew. In other instances, several of the plots were discovered during the investigation and interrogation of high-profile Al-Qaeda operatives arrested overseas. A survey of the remaining 11

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<sup>180</sup> Jena Baker and Jay Carafano, “Terrorist Watch: 23 Plots Foiled Since 9/11,” The Heritage Foundation, *Backgrounder*, no. 2294, (July 2, 2009). Because the report is not all-inclusive, a broad survey of open source information is necessary to compile the necessary data to present the findings. Therefore, unless otherwise referenced, individual cell data was obtained from The Heritage Foundation report.

<sup>181</sup> Neighbors of the six suspects complained that, “this was racial profiling... We know these boys. They are just like us. We watch them play soccer. We pray with them. We know their parents and their brothers and sisters and wives. If these six are suspects, then so is everyone else.” Excerpt from text of Dina Temple-Raston, “The Jihad Next Door,” on the NPS Web site, available at <http://www.npr.org/templates/story/story.php?storyId=14285994> (accessed October 28, 2009).

<sup>182</sup> Text of the transcript of “Chasing the Sleeper Cell,” a video documentary on the Lackawanna Six terror probe, on the PBS Web site, available at <http://www.pbs.org/wgbh/pages/frontline/shows/sleeper/etc/script.html> (accessed October 28, 2009).

<sup>183</sup> Jena Baker and Jay Carafano, “Terrorist Watch: 23 Plots Foiled Since 9/11,” The Heritage Foundation, *Backgrounder*, no. 2294, (July 2, 2009). Unless otherwise referenced, individual cell data obtained from The Heritage Foundation report.

plots not presented in this analysis also indicates that profiling was not used by law enforcement either to prompt the investigation of the activities of the suspects or disrupt the plot.

Accused	Year	Target(s)	Nature of Attack/Plans	Connection(s)	Factor Prompting Investigation
Richard Reid, aka Abdul Raheem, aka Tariq Raja	Dec-01	Commercial Aircraft	Detonate Explosive in Shoe	Al-Qaeda <sup>184</sup>	Caught in the act by flight crew and passengers as he tried to light a fuse attached to his shoe.
Jose Padilla, aka Abdullah al-Mujahir	May-02	Unknown location in America	Plot to detonate radiological "dirty bomb"	Al-Qaeda <sup>185</sup>	Believed that captive terrorist leaders discussed information about Padilla with U.S. agents <sup>186</sup>
Lackawanna Six, aka Buffalo Six, aka Buffalo Cell <sup>187</sup>	Sep-02	Unknown	Unknown	Al-Qaeda	FBI tipped-off by an anonymous letter <sup>188</sup>
Iyman Faris, aka Mohammad Rauf	May-03	Brooklyn Bridge & Train in Washington D.C.	Collapse the bridge using blowtorches, & derailling train in D.C. in simultaneous attacks	Al-Qaeda	Faris' identity discovered during either the interrogation of Khalid Sheikh Mohammed (KSM) and search of his personal files and communications <sup>189</sup>

Table 2. Analysis of Post-9/11 Terror Plots

<sup>184</sup> Maria Ressa, "Sources: Reid Is Al-Qaeda Operative," December 6, 2003, on the CNN.com Web site, available at <http://www.cnn.com/2003/WORLD/asiapcf/southeast/01/30/reid.alqaeda/> (accessed October 22, 2009).

<sup>185</sup> Tony Karon, "Person of the Week: Jose Padilla," June 14, 2002, on the Time.com Web site, available at <http://www.time.com/time/pow/article/0,8599,262269,00.html> (accessed October 22, 2009).

<sup>186</sup> Ibid.

<sup>187</sup> The Lackawanna Six members consist of Sahim Alwan, Yahya Goba, Yasein Taher, Faysal Galab, Shafal Mosed, and Mukhtar al-Bakri, all American Citizens, all of Yemeni descent, see Heritage Report.

<sup>188</sup> Text of the written transcript of "Chasing the Sleeper Cell," a video documentary on the Lackawanna Six Terror Probe, on the PBS Web site, available at <http://www.pbs.org/wgbh/pages/frontline/shows/sleeper/etc/script.html> (accessed October 28, 2009).

<sup>189</sup> Peter Bergen, "Commentary: Cheney wrong on Interrogations," August, 31, 2009, on the CNN.com Web site, available at [http://www.cnn.com/2009/POLITICS/08/31/bergen.cheney/index.html?section=cnn\\_latest](http://www.cnn.com/2009/POLITICS/08/31/bergen.cheney/index.html?section=cnn_latest) (accessed October 27, 2009).

Accused	Year	Target(s)	Nature of Attack/Plans	Connection(s)	Factor Prompting Investigation
Virginia Jihad Network	Jun-03	U.S. personnel in Afghanistan, undescribed targets in U.S. and India	Violating Neutrality Acts & waging war against the U.S. <sup>190</sup>	Al-Qaeda, Taliban & Lashkar-i-Taiba	See note. <sup>191</sup>
Dhiren Barot et al <sup>192</sup>	Aug-04	New York Stock Exchange, Bank Tower in Los Angeles, International Monetary Fund Headquarters, NY, and Citigroup as well as undisclosed targets in the UK <sup>193</sup>	Use limousines packed with explosives, plan included dispersing weaponized botulinum toxin	Al-Qaeda	See note. <sup>194</sup>

Table 3. Analysis of Post-9/11 Terror Plots (continued from Table 2)

<sup>190</sup> The Neutrality Acts prohibit American citizens and residents from attacking countries with which the United States is at peace, as the suspects also intended to strike in India.

<sup>191</sup> Federal investigators probe Wahhabi & Salafi extremist networks. Probes in Idaho, Michigan, New York and Northern Virginian extended to internet, mosques, charities, Islamic conferences, and U.S. prisons as sources of recruiting efforts, al-Timimi, the spiritual leader of the Virginia Jihad Network was tied to Wahhabi-Salafi extremist groups, once al-Timimi was identified, his house was searched and his network and associates were identified. From Susan Schmidt, "Spreading Saudi Fundamentalism in U.S.: Network of Wahhabi Mosques," October 2, 2003, on The Washington Post Web site, available at <http://www.washingtonpost.com/ac2/wp-dyn/A31402-2003Oct1?language=printer> (accessed October 28, 2009).

<sup>192</sup> At least seven other co-conspirators were charged in the UK: BBC News, "Man Admits Part in Terrorism Plot," April 30, 2007, on the BBC News Web site, available at [http://news.bbc.co.uk/2/hi/uk\\_news/6608937.stm](http://news.bbc.co.uk/2/hi/uk_news/6608937.stm) (accessed October 28, 2009).

<sup>193</sup> BBC News, "Man Admits UK-US Terror Bomb Plot," October 12, 2006, on the BBC News Web site, available at [http://news.bbc.co.uk/2/hi/uk\\_news/6044938.stm](http://news.bbc.co.uk/2/hi/uk_news/6044938.stm) (accessed October 28, 2009).

<sup>194</sup> UK authorities identify Barot, suspect him of being a "significant" Al-Qaeda operative, Scotland Yard places Barot under surveillance (codenamed Operation Rhyme), Pakistani police raid Barot's house in Pakistan in July 2004, discovering plans on laptop computer and notebook detailing the plots. From The Guardian, "Barot Operation Posed Complex Challenge," November 7, 2006, on the guardian.co.uk Web site, available at <http://www.guardian.co.uk/uk/2006/nov/07/usa.terrorism> (accessed October 28, 2009).

Accused	Year	Target(s)	Nature of Attack/Plans	Connection(s)	Factor Prompting Investigation
James Elshafay and Shawawar Matin Siraj	Aug-04	New York Subway Station near Madison Square Garden	Disrupt the 2004 Republican National Convention	No known connections to terrorist groups, considered lone-wolf terrorists	New York City Police Intelligence Division undercover detective, known as "Kamil Pasha" infiltrated the small group and exposed the plans <sup>195</sup>
Yassin Aref and Mohammed Hossain	Aug-04	Pakistani diplomat	shoulder-fired grenade launcher to assassinate diplomat	No known connections to terrorist groups	Undisclosed information about Yassin Aref found in a bombed out encampment in Iraq, FBI begins surveillance, sting operation set-up by FBI, suspects lured into purchasing fake shoulder-fired grenades in a fake plot to assassinate a Pakistani-diplomat <sup>196</sup>
Jamiyyat UI-Islam Is-Saheeh (JIS)	Aug-05	National Guard facilities, Synagogues, and other facilities in the Los Angeles area	Shoot up targets	No known connections to terrorist groups	See note. <sup>197</sup>

Table 4. Analysis of Post-9/11 Terror Plots (continued from Tables 2 and 3)

<sup>195</sup> Press Release, "Shahawar Matin Siraj Convicted of Conspiring to Place Explosives at the 24th Street Subway Station," U.S. Attorney's Office, Eastern District of New York, May 24, 2006, available at <http://www.justice.gov/usao/nye/pr/2006/2006may24.html> (accessed October 28, 2009).

<sup>196</sup> Brendon Lyons, "Suspects Raise Domestic Spy Issue," January 5, 2006, on the Timesunion.com Web site, available at <http://www.timesunion.com/AspStories/story.asp?storyID=436432&category=REGION&newsdate=1/5/2006> (accessed October 28, 2009).

<sup>197</sup> One of the members, Haley Washington, was arrested for robbery 1 month prior to charging JIS with the plot; authorities subsequently searched Washington's apartment under suspicion of his involvement in a series of robberies that police thought were tied to prison or street gangs, the search turned up jihadist literature and evidence of a target list. See Greg Krikorian, "2 Men's Ties to Group of Extremists Investigated," on the *Los Angeles Times* Web site, available at <http://articles.latimes.com/2005/jul/15/local/me-arrests15> (accessed October 28, 2009).

Accused	Year	Target(s)	Nature of Attack/Plans	Connection(s)	Factor Prompting Investigation
Fort Dix Plot	May-07	U.S. Army Base, Fort Dix, New Jersey	Six men intended to fire assault weapons and throw grenades at soldiers	No known connections to terrorist groups	In Jan-06, an unidentified store clerk alerted police to a video that showed the men firing assault weapons, calling for jihad and yelling "God is great" in Arabic...the group submitted the video file to the store so that it could be copied onto a DVD <sup>198</sup>
JFK Airport Plot: Russeel Defeitas et al	Jun-07	John F. Kennedy Airport	Blow up aviation fuel tanks and pipelines	Unspecified Islamic extremist groups in South America and the Caribbean	There is no public information that states when U.S. authorities first learned of the plot, an informant was introduced to the investigation in 2006, infiltrated the group and helped authorities gather evidence to prosecute in exchange for money and reduced sentencing. <sup>199</sup>
Christopher Paul	Jun-08	Americans at vacation resorts in Europe	Use explosive devices against targets	Al-Qaeda	Open source information is sketchy on exactly how the FBI got wind of Paul, but Paul had been working with Al-Qaeda since the 1990s and had associations with an Islamic fundamentalist that was arrested in 1993. It is likely that authorities picked up on his identity from a variety of confidential sources. <sup>200</sup>

Table 5. Analysis of Post-9/11 Terror Plots (continued from Tables 2, 3, and 4)

<sup>198</sup> Dale Russakoff and Dan Eggen, "Six Charged in Plot to Attack Fort Dix," May 9, 2007, on The Washington Post Web site, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/08/AR2007050800465.html> (accessed October 28, 2009).

<sup>199</sup> The NEFA Foundation, "The John F. Kennedy (JFK) International Airport Plot," no.16 in Target America series, on the NEFA Foundation Web site, available at <http://www.nefafoundation.org/miscellaneous/FeaturedDocs/nefajfkplot1008.pdf> (accessed October 28, 2009).

<sup>200</sup> News release, "Ohio Man Sentenced to 20 Years for Terrorism Conspiracy to Bomb Targets in Europe and the United States," Gregory C. Lockhart, U.S. Attorney, Southern District of Ohio, February 26, 2009, on the FBI Field Office Cincinnati Web site, available at <http://cincinnati.fbi.gov/doj/pressrel/2009/ci022609.htm> (accessed October 28, 2009).

## 2. Additional Observations

One of the key take-aways from the above examination is that it is necessary to recognize that it is certainly possible that racial bias in people may have been a large factor in deciding to act on their suspicion in contacting law enforcement to inform them that they believe they witnessed a suspicious act. In the context of the 23 foiled terrorist plots against the United States, this may only be the case in the Fort Dix case. Disrupting the plans in the other cases seems to have stemmed from investigative leads obtained through tracing social networks, undercover agents who infiltrate small radical groups, interrogations of terrorists captured overseas, and other anonymous tips.

Because suspicion of Muslims and fear of the violent Islamic quest to undermine or overthrow the U.S. government in society is clearly evident, this thesis recognizes that such suspicion and fear catalyzes racial bias, which might manifest in different ways. One way such fear and suspicion may manifest itself is when non-Muslims gravitate towards observing people that appear Muslim, to include prompting people to call in tips to law enforcement about suspicious activity on the part of individuals who look Muslim. One area of the literature calls this cognitive bias.<sup>201</sup> In the context of profiling, whether it is in law enforcement for crime control or counterterrorism for preventing terrorism, cognitive bias is “an overestimation of the likelihood that members of a racial category will act in accordance with such alleged core traits as criminal activity.”<sup>202</sup> There is, however, no clear evidence of cognitive bias playing a role in any of the 23 cases. An argument for cognitive bias might be made in the Fort Dix case because the store clerk saw a video of Muslim men firing guns yelling “God is great!” in Arabic. It is possible that a cognitive association involving bias towards events involving Islamic terrorism played a role in prompting the store clerk to notify the authorities. One might also

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<sup>201</sup> Cognitive bias is an implicit process that results from the cognitive process of categorization, such categorization can lead individuals to overemphasize certain core traits of the individual categories. See Alex C. Geisinger, “Rethinking Profiling: A Cognitive Model of Bias and Its Legal Implications” (March, 27 2009). *Oregon Law Review*, Vol. 86, No. 3, 2007; Drexel College of Law Research Paper No. 2009-A-04, available at SSRN Web site at <http://ssrn.com/abstract=1369288> (accessed October 28, 2009).

<sup>202</sup> Alex C. Geisinger, “Rethinking Profiling: A Cognitive Model of Bias and Its Legal Implications” (March, 27 2009). *Oregon Law Review*, Vol. 86, No. 3, 2007; Drexel College of Law Research Paper No. 2009-A-04, available at SSRN Web site at <http://ssrn.com/abstract=1369288> (accessed October 28, 2009), 658.

qualify an argument for cognitive bias in the Lackawanna Six case, but the letter that the FBI received contained specific details about the suspects, suggesting that the tip most likely came from someone who knew them well. Nevertheless, I recognize that cognitive bias might exist, even in law enforcement officers, but the findings of my survey detailed in Chapter V suggest that law enforcement officers have dozens of visual and behavioral indicators other than race, ethnicity or religion that they rely on in their rationale for reasonable suspicion and probable cause.

### **C. CONCLUSION**

Racial, ethnic, or religious profiling appears not have played any role in the actual disruption of terrorist plots. Moreover, the previous chapter also highlights that framing profiling in greater context, such as issues of identity, assimilation and integration, and the strategy and objectives of Islamic terrorist organizations, indicates that profiling Muslims works against an effective long-term CT-strategy. It does so for two reasons: First, ethnic profiling exacerbates the identity gaps between Muslim and non-Muslim, alienating the former and making the condition of social and political detachment more of a likelihood; second, ethnic profiling actually portrays the U.S. as fundamentally racist and willing to forego its own democratic values, playing directly into the strategy of Islamic terrorist organizations by isolating the United States from its allies and furthering the ethnic divide, both within and outside the United States. This provides Islamic terrorist organizations such as Al-Qaeda leverage in advancing its own recruiting propaganda. These reasons suggest that profiling is counterproductive.

A growing trend in Al-Qaeda recruiting practices highlights an unsettling finding: not all jihadists are originally from Arab nations, and several are from the United States. The findings of an in-depth analysis of 12 of the plots support this assertion. This trend suggests that physical appearances are not constant. Islamic terrorists can come in any skin color and appearance, and are more than likely to use that heterogeneity to avoid attracting attention from authorities. Moreover, this trend highlights that ethnicity and national origins are not fixed indicators of the Islamic terrorist. More Americans of Caucasian and Latino backgrounds are reaching out to groups like Al-Qaeda to participate in their violent reprisals. As this trend continues to develop, law enforcement

and intelligence communities will have to rely more and more on investigative techniques such as social networking models, crime-mapping, and other facets of intelligence-led policing. It appears likely that their investigations will continue to pinpoint non-Arab Muslim converts that have decided to resort to violence to defend their new identities.

While the previous chapter highlighted the extensive efforts of our nation's law enforcement and intelligence communities to build the capacity to prevent terrorism, this chapter illustrates that the newly-implemented tools of CT must be used with discretion to avoid the pitfalls of a technique such as ethnic profiling. It appears that much of the debate on profiling Muslims is divided along two opposite philosophical lines. Much of our nation's experience with racial profiling tells us that race is not a good indicator for preventing crime, especially when it is used in an impulsive and arbitrary manner. The social costs of such a technique are simply too great to justify its use. Moreover, the nature of identity as it pertains to assimilation and integration, coupled with the objectives of Islamic terrorism, tells us that profiling individuals of Muslim identity is counterproductive, i.e., the technique actually works against an effective CT-strategy.

After the attacks on 9/11, it appears that many believed that a technique such as profiling could keep Americans safe from another attack by Islamic extremists. Most of the opponents of such a view argue that profiling is constitutionally unlawful and contrary to basic democratic principles. Good policing techniques tell us that race and ethnicity will be used, to some degree, when the threat is more narrowly defined. For this reason, it might seem that to some extent, profiling Muslims is a pragmatic response to the threat. I have illustrated, however, that such a technique is counterproductive to effective CT-operations because it further alienates an entire community, hindering integration and assimilation. In essence, profiling divides and isolates the United States. As a consequence, the grand objective of Islamic extremist organizations is partly successful, even without those organizations ever having to successfully commit another attack on U.S. soil.

There is little doubt that Islamic terrorists continue to plan and plot against the United States and its interests. The evidence is apparent around the globe. While there have been several foiled plots of terrorism intended to target innocent Americans, it

appears that ethnic profiling was not used by law enforcement in disrupting those plots. Nevertheless, many in the Muslim community feel that they are secretly being spied on by both the law enforcement and intelligence communities, and the perception that they are being profiled still exists, thus the unintended consequences continue to spread.

In the next chapter, I examine the perspective of actual law enforcement officers and explore the extent to which these officers use race, ethnicity, and religion as factors in their rationale for probable cause. I do this by conducting an exploratory survey of 29 law enforcement officers, the large majority of whom have over 20 years' experience in law enforcement and actively participate in CT-operations. This chapter will highlight the visual and behavioral indicators that these officers use in their rationale for probable cause, and illustrate some of the gaps in training that could potentially be addressed by more in-depth studies in the future.

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## **V. PROFILING METHODOLOGIES: LAW ENFORCEMENT “PROFILING” TECHNIQUES**

A major study of racial, ethnic, or religious profiling is challenging for many reasons. The debate is divided along philosophical lines that seem unmovable. The use of profiling in law enforcement—either real or perceived—is often framed in a manner that paints a very negative view of law enforcement officers. The reaction by law enforcement is often very defensive. Whether profiling is real or whether it is a myth, as scholars like Heather MacDonald and Michelle Malkin suggest, the I-95 case does suggest that race is not a good indicator in preventing crime. Law enforcement methods such as intelligence-led policing provide a logical and systematic approach to tracking and mapping crime trends, which allows law enforcement agencies the ability to zero-in and prioritize patterns crime in a manner consistent with their level of resources. Such methods are now being applied to drug and gang enforcement all over the country. Moreover, such methods have become the cornerstone in CT-operations, making every police officer with a radio or patrol-car computer an integral part of a national network of CT-police.

In this chapter, I focus on law enforcement’s methods of identifying visual and behavioral indicators that may seem as indicators of crime, including terrorism. I do this by conducting an exploratory survey of actual law enforcement officers. First, I explain the method I used in conducting an exploratory survey of law enforcement officers. I then highlight four major findings that explain the visual and behavioral indicators they use in identifying suspicious behavior or building rationale for probable cause. These findings will highlight the specific visual and behavioral indicators, including race, ethnicity, and religion, that law enforcement officers, many of whom are now or have been active participants in CT-operations, use in identifying suspicious behavior and building rationale for probable cause. This contributes to my thesis by illustrating that law enforcement officers understand that factors such as race, ethnicity, and religion are poor indicators of crime. They use dozens of different indicators together in their

rationale for reasonable suspicion and probable cause, and generally agree that race, ethnicity and religion should never be the sole factor in initiating police action.

#### **A. EXPLORATORY SURVEY METHODOLOGY**

The exploratory survey uses a very simple approach. The survey is composed of twelve questions, several of which are open ended to allow the respondent to freely write his or her responses. To protect the integrity of the survey, close discretion was used in sending invitations to participate in the survey.<sup>203</sup> The main goal of the survey was to obtain responses from a variety of law enforcement officers (LEOs), i.e., LEOs from local, state, and federal agencies. The initial goal was to obtain responses from at least ten LEOs. In all, a total of 27 LEOs representing local, state, and federal law enforcement agencies participated in the study. All survey participants are cited as anonymous for two reasons: to facilitate a research environment that facilitates open responses, and to protect the identity of the law enforcement officers that were willing to participate in my research study. I did not collect detailed information as to the specific jurisdiction or area that the participants currently work. The only identifiable questions that I asked are what type of law enforcement they are in, i.e., state, local, federal, etc.; how many years' experience they have; and if they are now or have ever been involved with CT-operations. This ensures that the LEO's identity is protected while also providing a means to filter answers in order to better describe the results.

This survey is intended to explore the different factors that law enforcement officers use in their rationale behind reasonable suspicion and probable cause. The data presented in this chapter is intended to satisfy four objectives:

- (1) Identify the extent that LEOs use race, ethnicity, and religion in their rationale for probable cause.
- (2) Identify the various visual and behavioral indicators that LEOs use in their rationale for reasonable suspicion or probable cause.

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<sup>203</sup> My thanks to Deirdre Walker, the Alumni Network Coordinator for the Center for Homeland Defense and Security at the Naval Postgraduate School for her assistance in selecting law enforcement officers to participate in the survey. My thanks also to several of the graduates in the alumni network of the FBI National Academy for their assistance in selecting law enforcement officers to participate in the survey.

- (3) Assess the extent and quality of the training that LEOs receive in identifying visual and behavioral indicators used in their rationale for reasonable suspicion or probable cause.
- (4) Assess the extent and quality of the training that LEOs receive in issues surrounding racial profiling.

The next section will present a summary of the major findings from the survey by presenting the questions along with the participants' responses. Complete data is available for further query and investigation in Appendix B.

## **B. MAJOR FINDINGS**

The combined law enforcement experience of the respondents is vast. The survey respondents were primarily local LEOs, with 67% of the participants identifying themselves as either local, municipal or city LEOs. The respondents who identified themselves as such have all had long careers: Sixteen of the 19 participants have 20 years of law enforcement experience or greater, the remaining three have between 15 and 19 years of experience. All but one of the participants who identified themselves as members of state law enforcement agencies also have 20 years of law enforcement experience or greater. In all, 28% of the total respondents have over 30 years of law enforcement experience, while just one respondent has less than ten years' experience.

### **1. The Extent that LEOs Use Race, Ethnicity, and Religion in Their Rationale for Probable Cause**

The large majority of LEOs who participated in the study indicated that race, ethnicity and religion are not appropriate indicators in building a rationale for PC. Some of the respondents indicated that race, ethnicity, or religion might play a small role in PC when there is either a pre-given description of the suspect, or when they are coupled with several other indicators. As many as 17% of the participants indicated that race, ethnicity, or religion will at least be a small part of a rationale for PC. In one case, it is somewhat apparent that LEOs may still be making a categorical association to attacks on 9/11. As such, further field research is required to determine the extent that the memory

of 9/11 and the subsequent categorization of the threat, i.e., cognitive bias, plays a role in a LEO's rationale for reasonable suspicion or probable cause.

## **2. The Various Visual and Behavioral Indicators that LEOs Use in Their Rationale for Reasonable Suspicion or Probable Cause**

Respondents associated with CT-investigations or operations listed dozens of visual and behavioral indicators that they use in their rationale for reasonable suspicion and probable cause. None of the indicators had any association to race, ethnicity, or religion, but instead included factors such as nervousness, avoidance, demeanor, furtive behavior, sweating, how they act when police approach, lack of eye contact, physical symptoms of unlawful drug use such as odor and red eyes, contradictory explanations and stories, and suspicious paperwork. The most common answers among all the participants regardless of their experience with CT-investigations or operations includes factors such as nervousness, shaking, sweating, inconsistent stories, lack of eye contact, and avoidance. Finally, several officers indicated that taking photographs in a manner consistent with surveillance is an indicator of suspicious behavior, this is particularly consistent with the warning signs that an individual might be engaged in planning a terrorist attack.

## **3. The Extent and Quality of the Training that LEOs Receive in Identifying Visual and Behavioral Indicators for Reasonable Suspicion**

Nearly 90% of the participants learned how to identify visual and behavioral indicators through on the job training, while 85% indicated that they had received formal classroom training and 85% indicated that they picked it up as they became more experienced. A quarter of the respondents indicated that it was expected of them that they already know the different indicators, i.e., that it was common sense. Many of the LEOs indicated that they engage in some type of extracurricular study to train and refresh themselves in identifying suspicious visual indicators, including self-study on the issues surrounding racial profiling and the kinds of factors that constitute legitimate indicators. The data also suggests that initial training on visual and behavioral indicators of reasonable suspicion or probable cause is minimal, and that refresher training is also

minimal. This finding highlights that more field research is required to determine the training gaps in departments throughout the nation. A broad randomized field study of individual police departments at the local, state and federal levels might highlight whether lack of initial or refresher training is a problem in agencies nationwide, or if it is isolated to just a few law enforcement agencies.

#### **4. LEOs Training on Issues Surrounding Racial Profiling**

The data on the extent and quality of training on the issues surrounding racial profiling suggests that a vast majority of the LEOs have received some type of specialized training on racial profiling, while a small minority received no training, and an even smaller minority indicating that no additional training is needed. Finally, the open-ended responses on when the line is crossed when it comes to racial profiling illustrate that LEOs generally agree that race should not be the primary indicator in developing PC and that the line is crossed whenever race is the primary motivator, i.e., all other factors are excluded in the rationale for reasonable suspicion or probable cause, or when race is the only factor used in the decision to take police action.

### **C. CONCLUSION**

As indicated in the Maryland I-95 case study, when law enforcement has a narrowly-defined mission set, such as a crackdown on the trafficking and distribution of illicit drugs, they may have a detailed analysis of the threat. Such analyses might include the criminal groups that are predominantly responsible for the trafficking and distribution of drugs. Often times, as in the case of many gangs, these criminal groups will be composed of specific race and ethnicities. MS-13 and Latin Kings, the gangs largely responsible for the importation and trafficking of drugs in Maryland, are made up only of Hispanics and South Americans, while the Outlaw Motorcycle Gangs (OMGs), such as Pagans, also responsible for drug trafficking and sales, requires that an individual be white to be a member, while the Thunderguards, another OMG, are all black. Does this mean that Hispanics, or all whites or blacks on motorcycles should be targeted? The answer is, probably not, but for different reasons than the reasons all Muslims should not be targeted in operations focused on cracking down on the threat of Islamic terrorism.

Nevertheless, knowing which criminal groups are predominantly responsible for the crime in question, including terrorism, suggests that race and ethnicity, and even religion, would be used—to some degree—in preventing the crime or crimes in question.

My exploratory research of visual and behavioral indicators, including the extent that race, ethnicity, and religion play a role, provides some interesting findings. There is only one instance where it appears that LEOs are categorizing the attacks of 9/11 in a manner that might be construed as cognitive bias. By and large, however, the participants agreed that race, ethnicity and religion are not appropriate factors in a rationale for probable cause. The survey data also suggests that LEOs receive formal training on the issues surrounding racial profiling, and that they consider that training to be adequate. Many of the officers, however, feel that more training is needed on the visual and behavioral indicators used in reasonable suspicion and probable cause. In sum, the participants agreed that race should never be the primary factor in PC, nor should race preclude all other factors of reasonable suspicion and PC.

## VI. CONCLUSION

### A. FINDINGS OF THE IMPACTS OF RACIAL, ETHNIC OR RELIGIOUS PROFILING IN CRIMINAL POLICING, INCLUDING TERRORISM

Today, the main emphasis of the debate on ethnic and religious profiling continues to revolve around the legality and morality of such a technique. The aim of this thesis was to take a fresh perspective on the debate of profiling in CT-operations and attempt to determine if profiling is an effective technique in a CT-strategy.

To discover whether or not profiling works in CT-operations, I conducted a case study of racial profiling in law enforcement to determine if it was effective in preventing crime. The results of the case study suggested the following conclusions:

- (1) Greater quantities of drugs, if not most, were found in just a handful of searches on black motorists indicating that the targeting of black motorists on I-95 was successful in finding drug dealers.
- (2) While MSP has defended its practices under the argument that their tactics have led to the arrest of a handful of dealers, a very high number of black motorists were targeted, whether intentionally or unintentionally, to yield those results. The resulting social consequences of the perceived targeting of black motorists were extremely high, exacerbating racial tensions and provoking lasting negative impacts on law enforcement-community relations.
- (3) There is no evidence to support or deny the claim that if MSP had pulled over and searched the same number of white motorists, that they would not have found a large amount of drugs or a handful of drug dealers.
- (4) Race is not a good indicator when relied on too heavily in preventing crime as black and white motorists are practically equal in hit rates; that is, they are just as likely to be found with some drugs.

These findings provide useful insight into determining whether ethnic profiling of Muslims can have any impact in preventing terrorism.

Chapter III provides recent historical background for the issue of profiling. Since the scope of the thesis is to examine the counterproductive nature of profiling in the context of CT-operations, it is necessary to explain the transformation of CT-operations in the post-9/11 era of homeland security. Counterterrorism is currently done by every police officer with a radio and patrol-car computer. Law enforcement and intelligence agencies have an advanced network of information sharing that is used to track patterns of crime and cross-reference such trends with massive databases of known and suspected terrorists. The end result is that every police officer on the street is now on the front lines of disrupting terrorist attacks and finding those individuals that might be actively plotting to commit mass murder.

In Chapter IV, I illustrate that racial, ethnic, or religious profiling does not appear to have played any role in the actual disruption of terrorist plots. Given the I-95 case study that found profiling to be a successful technique in finding drug dealers, one might assume similar outcomes for profiling Muslims in CT-operations. This chapter demonstrates, however, that the social costs of profiling Muslims is extremely high and that the technique is more than likely counterproductive because it will actually work against an effective long-term CT-strategy.

In light of the larger context of terrorism, including the issues of identity, assimilation and integration, profiling of Muslims can negate counter-terrorism efforts in the long-term. This occurs for two reasons: first, ethnic profiling exacerbates the identity gaps between Muslim and non-Muslim, alienating the former and making the condition of social and political detachment more of a likelihood; second, ethnic profiling actually portrays the U.S. as fundamentally racist and willing to forego its own democratic values, playing directly into the strategy of Islamic terrorist organizations by isolating the United States from its allies and furthering ethnic divides both within and outside the United States. This provides Islamic terrorist organizations such as Al-Qaeda leverage in advancing its own recruiting propaganda. These reasons suggest that profiling is counterproductive.

The trend that not all Islamic jihadists are of Arab descent suggests that physical appearances, ethnicity and national origins indicators of an Islamic terrorist are not fixed.

More Americans of Caucasian and Latino backgrounds are reaching out to groups like Al-Qaeda to participate in their violent reprisals. As this trend continues to develop, law enforcement and intelligence communities will have to rely more and more on investigative techniques such as social networking models, crime-mapping, and other facets of intelligence-led policing. It appears likely that their investigations will continue to pinpoint non-Arab Muslim converts that have decided to resort to violence. Thus, focusing on one race or ethnicity could lead an officer to miss someone of a different ethnicity that may be plotting an attack. This suggests that other visual and behavioral indicators will need to be relied upon more heavily than race or ethnicity.

Chapter V highlights several important findings pertaining to this thesis. I conducted an exploratory survey of law enforcement officers in order to attempt to identify the specific visual and behavioral indicators that they use in identifying suspicious behavior and building rationale for probable cause. I found, first, that the large majority of law enforcement officers (LEOs) that participated in the study indicated that race, ethnicity, and religion are inappropriate indicators in building a rationale for probable cause (PC). Some of the respondents indicated that race, ethnicity, or religion might play a small role in PC when there is either a pre-given description of the suspect, or when they are coupled with several other indicators. In one case, it is somewhat apparent that LEOs may still be making a categorical association to attacks on 9/11. As such, further field research is required to determine the extent that the memory of 9/11 and the subsequent categorization of the threat, i.e., cognitive bias, plays a role in a LEO's rationale for reasonable suspicion or probable cause.

The second major finding is that LEOs use dozens of visual and behavioral indicators in their rationale for reasonable suspicion and probable cause. None of the indicators have any association to race, ethnicity, or religion. The most common answers among all the participants regardless of their experience with CT-investigations or operations includes factors such as nervousness, shaking, sweating, inconsistent stories, lack of eye contact, and avoidance. Finally, several officers indicated that taking

photographs in a manner consistent with surveillance is an indicator of suspicious behavior, this is particularly consistent with the warning signs that an individual might be engaged in planning a terrorist attack.

The third important finding is that while between 85–90% of the participants learned how to identify visual and behavioral indicators through on-the-job training and formal classroom training, a quarter of the respondents indicated that it was expected of them that they already know the different indicators, i.e., that it was common sense. Many of the LEOs indicated that they engage in some type of extracurricular study to train and refresh themselves in identifying suspicious visual indicators, including self-study on the issues surrounding racial profiling and the kinds of factors that constitute legitimate indicators. The data also suggests that initial training on visual and behavioral indicators of reasonable suspicion or probable cause is minimal, and that refresher training is also minimal. This finding highlights that more field research is required to determine the training gaps in departments throughout the nation. A broad randomized field study of individual police departments at the local, state and federal levels might highlight whether lack of initial or refresher training is a problem in agencies nationwide, or if it is isolated to just a few law enforcement agencies.

The fourth and final important finding of this survey is that the data on the extent and quality of training on the issues surrounding racial profiling suggests that a vast majority of the LEOs have received some type of specialized training on racial profiling, while a small minority received no training, and an even smaller minority indicating that no additional training is needed. Finally, the open-ended responses on when the line is crossed when it comes to racial profiling illustrate that that LEOs generally agree that race should not be the primary indicator in developing PC and that the line is crossed whenever race is the primary motivator, i.e., all other factors are excluded in the rationale for reasonable suspicion or probable cause, or when race is the only factor used in the decision to take police action.

## **B. ROLES AND RESPONSIBILITIES FOR POLICY AND DECISION MAKERS**

Policymakers should continue to strive for an open dialogue between the political representatives and the constituencies that they represent, especially in constituencies with large Muslim populations. This will help ensure that problems are dealt with as soon as they begin to develop vice letting them manifest and resurface later in dangerous forms. This is based on the “broken windows” theory.<sup>204</sup> It will also prevent what was seen in Europe, large exclusive colonies of Muslims that are, for all intents and purposes, separate and unequal members of the U.S. society.

The United States, in some respects, has made headway with regard to including expatriate minorities in the political process. Members of the mixed-Arab diaspora living in Dearborn, Michigan are undoubtedly still struggling with identity conflicts.<sup>205</sup> Nevertheless, institutions and councils, to include institutions of higher education such as the programs dedicated to Arab and Muslim relations at the University of Michigan in Dearborn, provide representation to members of diasporas representing nearly every country in the Middle East living in Dearborn, Michigan. Though members of these diasporas that are followers of the Christian faith have accepted a greater extent of assimilation in the U.S.,<sup>206</sup> these institutions provide opportunities for better integration in the host communities by providing mechanisms for social engagement, political participation and representation and access to education opportunities.

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<sup>204</sup> Wilson & Kelling's 'Broken Windows' theory “posits that something as simple as a building with a broken window signals abandonment, a lax attitude toward property, and therefore an absence of respect for the law. The “broken window” is the first step in a neighborhood’s slow decline and deterioration. Over time, that decline gets progressively worse. Panhandling, prostitution, drug dealing - all become part of the regular activities in front of the building which then spreads out into the neighborhood. People who live in the area start to feel vulnerable and begin to withdraw. They become less willing to intervene to maintain public order and crime becomes rampant and seemingly out of control.” See Joan Adams. “The Broken Windows Theory,” Supply House Times. Troy: July 2006. Vol. 49, No. 5, 26–27.

<sup>205</sup> Marwa Shoeb, Harvey M. Weinstein, and Jodi Halpern, “Living in Religious Time and Space: Iraqi Refugees in Dearborn, Michigan.” *Journal of Refugee Studies* 20, no.3 (2007).

<sup>206</sup> Ibid.

## 1. Judging Quantitative Data

Caution must be employed when judging statistical disparities in racial, ethnic, or religious data in measuring the success of profiling. Statistical disparities might not be accompanied by accurate analyses regarding the meaning of the disparate numbers in racial data. This paper demonstrates this claim. The Interstate-95 racial profiling data indicates that both white and black motorists are just as likely to be found with drugs. However, the data emphasizes that black motorists were searched more often in order to support a claim that law enforcement officers are unlawfully targeting a particular minority race. An in-depth study of the data for the purpose of determining the effectiveness of relying on race as an indicator in preventing crime illustrates both the costs and benefits of such a technique, which allows analysts to get a better sense of the utility or disutility in using profiling as part of an overall disruption strategy.

The pitfalls of statistics are also such that they can sometimes upstage more effective law enforcement efforts in dealing with crime surges in minority areas. For example, in a hearing before the Subcommittee on the Constitution, Federalism and Human Rights regarding the “The End Racial Profiling Act of 2001,” Steve Young, the National Vice President of the Fraternal Order of Police made the following statement:

Consider the case of the Arlington County Virginia Police Department, which responded to demands from the black community to step up enforcement against drug dealers in minority neighborhoods. The police instituted aggressive motor-vehicle checks, revived the use of ‘jump out’ squads and cracked down on quality-of-life offenses in an effort to make dealers uncomfortable in the neighborhood. By the end of summer [2001], it was clear the new enforcement strategy had worked, earning the police deserved praise from the community as a whole...this is good police work—not racism.<sup>207</sup>

As Young suggests, the statistical data will show a “disproportionate” number of minority arrests in this area during that time. Nevertheless, the tactics produced positive

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<sup>207</sup> United States. Congress. Senate. Committee on the Judiciary. Subcommittee on the Constitution, Federalism, and Property Rights, *S. 989, the End Racial Profiling Act of 2002 : Hearing before the Subcommittee on the Constitution, Federalism, and Property Rights of the Committee on the Judiciary, United States Senate, One Hundred Seventh Congress, First Session, August 1, 2001* (Washington: U.S. G.P.O, 2002), 35.

results because they had the complete support of the impacted community. Similarly, a bottom-up approach in counterterrorist policing is worthy of exploration. Again, should the Arab or Muslim communities reach out to law enforcement to step up their efforts to block the influx of radical propaganda that is targeting the youth susceptible to their message, the results could be just as positive as that which were seen by Arlington County Police and the community that they worked to protect. Meanwhile, the aperture for recruitment remains wide open.

### **C. AREAS FOR FURTHER RESEARCH**

More field research is required to determine how police officers are being trained in identifying visual and behavioral indicators of crime, and to determine the extent that the memory of 9/11 and the subsequent categorization of the threat, i.e., cognitive bias, plays a role in a LEO's rationale for reasonable suspicion or probable cause. Nearly 25% of the respondents of my exploratory study indicated that it was expected that the visual and behavioral indicators are simply common sense and that they should know it already. In all, more respondents stated that the training was poor and needs improvement. These findings suggest that law enforcement officers need better training in identifying visual and behavioral indicators. A more in-depth field study of the manner in which training on visual and behavioral indicators is administered will likely identify shortfalls in training that if addressed properly, might have present positive improvements on the effectiveness of law enforcement officers to see beyond race, ethnicity and religion. Similarly, an in-depth field study of cognitive bias in law enforcement officers, particularly pertaining to the association to 9/11, might help identify if cognitive bias is actually playing a role in a LEO's rationale for reasonable suspicion or probable cause, which might help identify additional training methods on visual and behavioral indicators.

### **D. FINAL WORDS**

Much of U.S. society's unwillingness to concede certain civil liberties for the sake of security is based on the preservation of our nation's founding principles and values. For some, however, the argument is based simply on inconvenience or paranoia.

Moreover, the profiling debate seems to philosophically divide Americans into two camps. The debate has become permeated with loaded language and accusations. Those who call for the use of profiling in CT-operations might understand too little about the consequences such a technique will have on assimilation and integration, and underestimate the cleverness of Islamic extremist organizations that are attempting to isolate and divide the United States, both internally and externally. Those who do not advocate profiling because of the classic civil liberties debate fail to understand that Islamic extremist organizations are civil liberties opportunists: they leverage their recruiting tactics and propaganda off of the seemingly good intentions of organizations such as the ACLU. When one considers issues such as identity, and assimilation and integration, than perhaps it is more clear that when it comes to preventing terrorism, profiling Muslims is more than likely counterproductive to an effective CT-strategy and likely to exacerbate growing tensions between Muslims and non-Muslims for generations to come.

## APPENDIX

### A. ADDITIONAL TABLES

	Marijuana	Cocaine	Crack	Heroin	Other
Trace Amount	Up to 0.1g	Up to 0.05g	Up to 0.05g	Up to 0.05g	Up to 0.05g or 0.05 du
Personal Use	.1 to 56g	0.05 to 10g	0.05 to 10g	0.05 to 2g	0.05 to 10g or 0.05 to 45 du
Small Dealer	56 to 455g	10 to 50g	10 to 50g	2 to 10g	10 to 50g or 25 to 150 du
Medium/Large Dealer	More than 455g	More than 50g	More than 50g	More than 10g	More than 50g or 150 du

Table 6. Drug Seizure Classification<sup>208</sup>

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<sup>208</sup> Gross and Barnes, *Road Work: Racial Profiling and Drug Interdiction on the Highway*, 695.

**B. SURVEY DATA OF VISUAL AND BEHAVIORAL “PROFILING” INDICATORS USED BY LAW ENFORCEMENT OFFICERS**

Questions One and Two: (1) What Area, or Type, of Law Enforcement are You In? (2) How Many Years of Law Enforcement Experience do You Have?

<b>Participant #</b>	<b>Area of LE</b>	<b>Years Experience</b>
1	Local law enforcement	30
2	State	35
3	State Law Enforcement Agency	28
4	State Police	27 Years
5	Municipal	30
6	Local	30
7	Local Major City	20
8	Mid Atlantic region- local agency	24
9	Retired local law enforcement, current Federal civilian	30
10	municipal law enforcement agency in NY metro area	34
11	Criminal Investigations local	32 years
12	State Police	22
13	Municipal law enforcement in a an Urban area	16
14	Municipal City	16
15	Municipal (Local)	20
16	Municipal	23
17	Metropolitan	19 years
18	municipal	25
19	Municipal	26
20	Homeland Security - Patrol Operations	20
21	State	15
22	Sheriff's Department	34
23	Federal Bureau of Investigation	33 (26 FBI, 7 LAPD)
24	US Border Patrol, I have worked at interior and checkpoint stations	7
25	Local Sheriff's Office	25
26	Municipal	25
27	city police, administration	30

Table 7. Summary of LEOs' Field and Experience

Question Three: Are You Now, or Have You Ever Been, Affiliated with Counterterrorism Investigations or Operations?

<b>Participant #</b>	<b>Response</b>
1	Yes
2	Yes
3	Yes
4	Yes
5	No
6	Yes
7	Yes
8	Yes
9	Yes
10	Yes
11	No
12	Yes
13	No
14	No
15	No
16	Yes
17	No
18	No
19	Yes
20	Yes
21	Yes
22	Yes
23	Yes
24	No
25	No
26	Yes
27	No

Table 8. Participants Experience with CT-operations or Investigations

Questions Four and Six (Summarized): Based on Your Experience and Training, Can You Briefly Describe 5 to 7 Different Visual and Behavioral Indicators that You Might Use in Your Rationale for Probable Cause?

The most common answers among these LEOs are factors such as:

- (1) Nervousness;
- (2) Avoidance;
- (3) Demeanor;
- (4) Furtive behavior;
- (5) Sweating;
- (6) How they act when police approach;
- (7) Lack of eye contact;
- (8) Physical symptoms of unlawful drug use such as odor and red eyes;
- (9) Contradictory explanations/stories and suspicious paperwork.

Question Five: Considering the Indicators that You Listed, Including the Indicators that You Did Not List, Please Indicate the Extent that You Believe Race, Ethnicity, or Religion Play a Role in Your Rationale for Probable Cause

Considering the indicators that you listed above, including the indicators that you did not list, please indicate the extent that you believe race, ethnicity, or religion play a role in your rationale for probable cause.									
Answer Options	Not a factor	Very Small Factor	Somewhat of a factor	As much of a factor as the other indicators	More of a factor than the other indicators	A very strong factor	The primary factor	Response Count	
Race	16	5	3	1	1	1	0	27	
Ethnicity	15	4	4	2	1	1	0	27	
Religion	19	2	3	1	1	1	0	27	
Additional Comments								15	
								<i>answered question</i>	<b>27</b>

Table 9. Extent that Race, Ethnicity and Religion Play a Role in PC

When asked about the extent that race, ethnicity, and religion play a role in their rationale for probable cause, each participant had the option of adding including an open-ended response as additional comments.

Most frequent responses:

- (1) “Based on counter terror investigations, the separation of visual and behavioral indicators is misleading, as there are very few auditory or tactile probable cause factors, they are almost always visual, even if it is a visual review of material.”
- (2) “I would never admit to using these as a factor.”
- (3) “The factors listed above are factors that should play only a very small part if any in establishing probable cause. I try not to use these factors in determining probable cause as they may become an issue in court.”
- (4) “While not an aspect of PC, they can be combined with PC to make stronger indicators. They can and sometimes are used as confirmation factors in certain areas, but they are not PC and are not used as a primary source of PC.”
- (5) “Only if it is related to known crime information and can be used to help identify a suspect whose known or suspected information is race, ethnicity or religion.”
- (6) “Race, ethnicity, and religion cannot be cited as reason establishing probable cause exists in any legal affidavit”
- (7) “I used to work at a station that had a busy checkpoint where 90% of the people passing through were Hispanics. Simple racial profiling of Hispanics would have been completely ineffective and would have been an incredibly stupid practice.”
- (8) “Above would become a factor if not normal for area or am focused on a particular subject/gang.”
- (9) “I would never use any of those three indicators as an articulable [*sic*] fact to establish probable cause for an arrest or detention.”
- (10) “Neither the Chinese nor the Irish attacked us on 9/11.”

Question Seven: How Would You Rate the Level of Training that Law Enforcement Officers in Your Field Receive in Identifying the Visual and Behavioral Indicators that You Listed?

<b>Participant #</b>	<b>Response</b>
1	Training is adequate, but could use some improvement
2	Training is adequate, but could use some improvement
3	Training is poor
4	Training is poor
5	Training is poor
6	Training is very thorough
7	Training is adequate, but could use some improvement
8	Training is very thorough
9	Other (please specify)
10	Other (please specify)
11	Training is adequate, but could use some improvement
12	Training is very thorough
13	Training is sufficient
14	Other (please specify)
15	Training is adequate, but could use some improvement
16	We do not receive training but need training
17	Training is sufficient
18	Training is sufficient
19	Training is sufficient
20	Training is sufficient
21	Training is poor
22	Training is adequate, but could use some improvement
23	Training is sufficient
24	Training is poor
25	Training is adequate, but could use some improvement
26	Training is poor
27	Training is poor

Table 10. Quality of Training in Identifying Visual and Behavioral Indicators

Question Eight: How Would You Rate the Level of Training that Law Enforcement Officers in Your Field Receive in Identifying the Visual and Behavioral Indicators that You Listed?

<b>Please select all that apply. Please indicate the manner in which you receive training in identifying the indicators you listed.</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
On the job training	92.6%	25
Formal training, i.e., classroom instruction	85.2%	23
Picked it up as you became more experienced	85.2%	23
Learn by mistake, i.e., trial by fire	48.1%	13
Expected that you already know it, i.e., it's common sense	25.9%	7
Other (please specify)	22.2%	6
<b><i>answered question</i></b>		<b>27</b>

Table 11. Quality of Training in Identifying Visual and Behavioral Indicators

Question Nine: Have You Ever Received Special Training on the Issues Surrounding Racial Profiling?

<b>Have you ever received special training on the issues surrounding racial profiling?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	92.6%	25
No	7.4%	2

Table 12. Training in Issues Surrounding Racial Profiling

Question Ten: If Answered "Yes" to the Previous Question, How Would You Rate the Training that You Received?

Participant #	Response
1	Excellent
2	Good
3	Good
4	Excellent
5	Excellent
6	Good
7	Good
8	Very Good
9	Poor
10	Good
11	Good
12	Very Good
13	Good
14	I didn't receive training
15	Very Good
16	Good
17	Good
18	Very Good
19	Good
20	Good
21	Good
22	Very Good
23	Good
24	Training was minimal but sufficient
25	Very Good
26	Good
27	Good

Table 13. Quality of Training on Issues Surrounding Racial Profiling

Question Eleven: Do you Believe that Law Enforcement Officers Need More Specialized Training on the Issues Surrounding Racial Profiling?

<b>Participant #</b>	<b>Response</b>
1	Yes
2	No
3	No
4	Yes
5	No
6	No
7	No
8	Yes
9	No
10	Yes
11	No
12	No
13	No
14	No
15	Yes
16	No
17	Yes
18	No
19	No
20	Yes
21	Yes
22	Yes
23	No
24	No
25	Yes
26	No
27	No

Table 14. Do LEOs Need More Training on Racial Profiling?

## Question Twelve: Have You Ever Received Special Training on the Issues Surrounding Racial Profiling?

The final question asked of the participants was an open-ended question. Participants were asked to state at what point they believe an officer has “crossed the line” when it comes to racial profiling.

The responses include:

- (1) When LEO's cannot provide other predictors and use race, religion or association only.
- (2) When a person is stopped because of their race, without other articulable [*sic*] circumstances.
- (3) Race should never be used as a factor when taking police action
- (4) When he or she uses race as the only determining factor to search or detain a subject
- (5) When race becomes the predominant or only factor, then this is across the line. Also, if the profile becomes intransigent (additional facts do not dissuade), then again we are across the line.
- (6) I disagree with the premise that it should ever be relied on, other than as a descriptor of known suspect (s), i.e., you have crossed the line when race is used as the basis for your exercise of law enforcement authority or discretion.
- (7) If an officer stopped a person solely on their race.
- (8) The line is crossed when negative or otherwise coercive outcomes occur simply because of negative perceptions of a characteristic (like race, ethnicity, gender, gender identification, etc.) of the individual by an officer, as opposed to an assessment of the actions and/or behavior of the individual. The real problem is that discrimination can be so very insidious as to be almost passively present in any interaction. Creating a

specific awareness of internal biases is a critical component to generating greater awareness of issues associated with profiling, or more generally, discriminatory policing.

- (9) Any reliance on race other than as its use as a suspect description at the same level as gender, height, weight, hair color, eye color, descriptive indicators such as tattoos, or other description of a specific suspect associated with a specific crime.
- (10) We received significant training so that we don't make this judgment error. In past years, I have seen people arrested for racial reasons and associating that race with crime (e.g., drug dealing). It has been years since I've seen this behavior by officers. However, despite efforts to adequately train officers, I don't doubt it is still a problem we all need to work on and correct.
- (11) Quite simply if an officer makes a vehicle stop, arrest, or other detention simply based upon race then they have "crossed the line" and their actions are not justified. Race is simply a characteristic that can sometimes be used to help identify a person bases on preexisting information or intelligence regarding a smuggling organization. The usefulness of race is very limited in law enforcement. Race should never be used as a basis to make an arrest, detention, or a vehicle stop. Race is also generally not acceptable as an articulable fact in establishing the suspicion needed to conduct a stop, search, detention, or arrest. The only exception that I can think of is one race is a part of a specific description used to identify a suspect (i.e., you have a description o a suspect who is an Hispanic male, 5'6", red shirt, tattoo on neck, ponytail, and you detain a person matching that description). In that case the race would be part of the description used to identify the person. Using race or ethnicity as a basis to conduct arrests, searches, or detentions is illegal and ineffective.

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